LOK SABHA DEBATES

(Fifth Series)

Vol. LXV

[October 25 to November 5, 1976/Kartika 3 to 14, 1898 (Saka)]

Eighteenth Session, 1976/1898 (Saka)

(Vol. LXV contains Nos. 1 to 11)

LOK SABHA SECRETARIAT
NEW DELHI

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LOK SABHA

Saturday, October 30, 1976/Kartika 8, 1898 (Saka)

The Lok Sabha met at Eleven of the Clock

[MR. SPEAKER *in the Chair*]

PAPERS LAID ON THE TABLE

NOTIFICATIONS UNDER INDUSTRIES (DEVELOPMENT AND REGULATION) ACT AND REVIEW AND REPORT OF MACHINE TOOL CORPORATION OF INDIA, LTD., AJMER, FOR 1974-75.

THE MINISTER OF STATE IN THE MINISTRY OF INDUSTRY (SHRI A. P. SHARMA): On behalf of Shri T. A. Pai I beg to lay on the Table—

(1) A copy of Notification No. S.O. 683(E) (Hindi and English versions) published in Gazette of India, dated the 19th October, 1976, issued under sub-section (1) of section 9 of the Industries (Development and Regulation) Act, 1951. [*Placed in Library. See* No. LT-11444/76].

(2) A copy each of the following papers (Hindi and English versions) under sub-section (1) of section 619A of the Companies Act, 1956:—

(i) Review by the Government on the working of the Machine Tool Corporation of India Limited, Ajmer, for the year 1974-75.

(ii) Annual Report of the Machine Tool Corporation of India Limited Ajmer, for the year 1974-75 along with the Audited Accounts and the comments of the Comptroller and Auditor General thereon.

[*Placed in Library. See* No LT-11445/76].

HALF-YEARLY REPORT OF THE COIR BOARD

SHRI A. P. SHARMA: I beg to lay on the Table a copy of the Half-yearly Report (Hindi and English versions) on the activities of the Coir Board and the working of the Coir Industry Act, 1953 for the period from 1st April, 1975 to 30th September, 1975, under sub-section (1) of section 19 of the Coir Industry Act, 1953 [*Placed in Library. See* No. LT-11446/76].

NOTIFICATIONS UNDER ESSENTIAL COMMODITIES ACT

THE MINISTER OF STATE IN THE MINISTRY OF AGRICULTURE AND IRRIGATION (SHRI ANNASAHEB P. SHINDE): I beg to lay on the Table a copy each of the following Notifications under sub-section (6) of section 3 of the Essential Commodities Act, 1955.

(1) The Wheat Roller Flour Mills (Licensing and Control) Amendment Order, 1976 (Hindi and English versions) published in Notification No. G.S.R. 1296 in Gazette of India, dated the 4th September 1976.

(2) The Inter-Zonal Wheat and Wheat Products (Movement Control) Third Amendment Order, 1976 (Hindi and English versions) published in Notification No. G.S.R. 804(E) in Gazette of India dated the 15th September, 1976.

(3) The Delhi Roller Mills Wheat Products (Ex-mill and Retail) Price Control (Second Amendment) Order, 1976 (Hindi and English versions) published in

Notification No. 809(E) in Gazette of India, dated the 20th September, 1976.

(4) The Rice and Paddy (Southern Zone) Movement Control Order, 1976 published in Notification No. G.S.R. 832(E) in Gazette of India, dated the 6th October, 1976.

(5) The Northern Rice Zone (Movement Control) Amendment Order 1976 (Hindi and English versions) published in Notification No. G.S.R. 835(E) in Gazette of India, dated the 8th October, 1976.

(6) G.S.R. 836(E) (Hindi and English versions) published in Gazette of India, dated the 8th October, 1976 rescinding certain Orders.

(7) The Inter-Zonal Wheat and Wheat Products (Movement Control) Fourth Amendment Order, 1976 published in Notification No. G.S.R. 844(E) in Gazette of India, dated the 13th October, 1976.

(8) The Inter-Zonal Wheat Products (Movement Control) Order, 1976 published in Notification No. G.S.R. 845(E) in Gazette of India dated the 13th October, 1976.

[*Placed in Library. See* No. LT-11447/76].

NOTIFICATION CONTAINING ERRATA TO NOTIFICATION NO. S.O. 327(E) UNDER GENERAL INSURACE BUSINESS

THE DEPUTY MINISTER IN THE MINISTRY OF FINANCE (SHRIMATI SUSHILA ROHATGI): I beg to lay on the Table a copy of Notification No. S.O. 3536 (Hindi and English versions) published in Gazette of India, dated the 9th October, 1976 containing Errata to Notification No. S.O. 327(E), dated the 29th April, 1976, laid under section 17 of the General Insurance Business (Nationalisation) Act, 1972. [*Placed in Library. See* No. LT-11448/76].

11.02 hrs.

BUSINESS OF THE HOUSE

THE MINISTER OF WORKS AND HOUSING AND PARLIAMENTARY AFFAIRS (SHRI K. RAGHU RAMAIAH): With your permission, Sir, I rise to announce that Government Business in this House during the week commencing 1st November, 1976, will consist of:—

(1) Consideration of any item of Government Business carried over from today's Order Paper.

(2) Discussion and voting on:

(i) Supplementary Demands for Grants (Railways) for 1976-77.

(ii) Demands for Excess Grants (Railways) for 1974-75.

(iii) Supplementary Demands for Grants (General) for 1976-77.

(iv) Supplementary Demands for Grants (Gujarat) for 1976-77.

(3) Introduction, consideration and passing of the Pondicharry Appropriation (No. 4) Bill, 1976.

(4) Consideration and passing of the Electricity (Supply) Amendment Bill, 1976.

श्री रामावतार शास्त्री (पटना) : अध्यक्ष महोदय, नान-आफिशियल बिजनेस के बारे में कुछ नहीं कहा है। हम लोगों ने बहुत से सवाल रखे हैं।

MR. SPEAKER: I have called a meeting of the Business Advisory Committee to decide on this.

SHRI D. N. TIWARY (Gopalganj): Bihar was ravaged by floods. This is a subject of great importance, but so-far we have not discussed this thing here. There should be some time for discussion of the flood situation of Bihar.

AN HON. MEMBER: And drought also.

श्री शंकर दयाल सिंह (चतरा) : अध्यक्ष महोदय, पहले दिन यह बात तय हुई थी कि देश में इस बीच बहुत सी महत्वपूर्ण घटनायें हुई हैं, दुर्घटनायें हुई हैं और विपदायें आई हैं उनके सम्बन्ध में सदन में विचार होना चाहिए । उस दिन माननीय संसदीय कार्य मंत्री ने कहा था कि ठीक है, जब संविधान संशोधन का काम पूरा हो जायेगा तो उसके बाद एक दो दिन इन कार्यों के लिए निर्धारित करेंगे । उस समय माननीय सदस्य, रामावतार शास्त्री जीव ने भी मांग की थी और सदन के करीब करीब सभी सदस्यों ने मांग की थी कि जो हवाई जहाज की दुर्घटना हुई है, रेल की दुर्घटनायें हुई हैं, बाढ़ और सूखे की विभीषिका हमारे सामने है और उसके साथ साथ एक बार राइजिंग प्राइसेज की समस्या फिर हमारे सामने आ रही है—इन विषयों पर विचार होना चाहिए । मेरा आपसे कहना है कि दो विषयों को आप जरूर लें, एक तो बाढ़ की स्थिति और दूसरे जो चीजों के दामों में मूल्य वृद्धि की टेन्डेन्सी है—और इन पर विचार किया जाये ।

MR. SPEAKER: Please hear the Minister first.

THE MINISTER OF WORKS AND HOUSING AND PARLIAMENTARY AFFAIRS (SHRI K. RAGHU RAMAIAH): Sir, I would like to inform the House that I am one who always stands by my commitment. On the subjects that will be discussed, certain suggestions have been made from this side and also from that side. We are meeting in the Business Advisory Committee at 12-30 to-day and we shall bear all the suggestions that have been made and any time reasonably necessary for a reasonable discussion on these reasonable matters will be considered therein.

SHRI P. G. MAVALANKAR (Ahmedabad): Mr. Speaker, Sir, my point is that the original schedule was for us to sit up to 3rd November. I would like the Minister to take into consideration the urgency of various matters of public importance which we want to discuss next week and, on the basis of that, let him kindly announce as early a possible the extension of the House—by one day or two days—so that we can adjust our time-table. Last minute extension of the House upsets our other important public programme.

SHRI R. S. PANDEY (Rajnandgaon) Sir, my request is this. Discussion on drought is also important for the Members of Parliament. Drought is there in the States of Madhya Pradesh Orissa and Andhra. (*Interruptions*). And there is no rain in some parts of the country. So, that also may be discussed.

MR. SPEAKER: If you all want to make any suggestion, I shall allow each one minute.

SHRI PRIYA RANJAN DAS MUNSI (Calcutta-South): Sir, the Labour Minister and the Industries Minister should be present at least when we discuss here the situations that have arisen in the working of the industries in West Bengal where lock-out, closure etc. even in emergency have become a regular feature of the monopoly houses. I wish both the Labour Minister as well as the Industries Minister are present when we discuss the very serious situation that has presented itself in both the private as well as the public sector industries.

PROF. S. L. SAKSENA (Maharajganj): I rise on a point of Order. On this Bill I have sent two amendments to a Clause.

MR. SPEAKER: We are not on this. You may do so later on.

PROF. S. L. SAKSENA: You said that the voting on clauses will be taken on the 1st. I say it is unconstitutional.

[Prof. S. L. Saksena]

There are lots of amendments moved by the hon. Members. They cannot remember all these if the voting is postponed. I say that under the rules the voting after discussion of clauses, if postponed to some other day, is illegal.

MR. SPEAKER: This is not a point of order. You may however do this later on. At the moment we are not on the Constitution (Amendment) Bill. We are on the business of the House for the next week.

श्री रामावतार शास्त्री (पटना) अध्यक्ष जी, ता० 25 को जब सत्रारम्भ हुआ था, उस दिन यह बताया गया था कि ता० 1 तक हम लोग संविधान संशोधन विधेयक पर विचार करेंगे, उस के बाद दो दिन और यदि जरूरत पड़ी तो एक दिन और बैठ कर गैर-सरकारी सदस्यों के प्रश्नों पर विचार करेंगे, चाहे बहस के रूप में, कालएटेन्शन के रूप में, अल्प-सूचना प्रश्न के रूप में आयें। मेरा सुझाव है कि संविधान संशोधन विधेयक के पास हो जाने के बाद आप हमें तीन दिन का मौका दीजिये, जिस में आप अपना काम भी कीजिये और हम लोगों को भी हमारे सवालों पर विचार करने का मौका दीजिये। जैसा अभी बाढ़ के बारे में यहां पर कहा गया है, कुछ जगहों पर सूखा पड़ा है...

अध्यक्ष महोदय : इन विषयों का जिक्र हो चुका है।

श्री रामावतार शास्त्री : परिवार नियोजन के सवाल पर मुजफ्फरनगर में गोली चली है, 40 आदमी मारे गये हैं, चासनाला की दुर्घटना के बाद सुदामडीह खान में दुर्घटना हुई है—इन सब सवालों पर यहां बहस होनी चाहिये।

SHRI NARSINGH NARAIN PANDEY (Gorakhpur): I wish that the Minister of Parliamentary Affairs includes in next week's items for discussion, discussion on a vitally important matter. That is about the cane price. The sugar factories are now going to start crushing. No announcement regarding a minimum cane price has so far been made.

The other thing is that in the last session, you will recollect that members were very much agitated on the issue of arrears of cane price. So far crores and crores of rupees of cane price arrears are pending. It has not been decided what Government are doing in that respect. As I said, the cane crushing season is going to start now. In UP alone, the arrears come to Rs. 7 crores. So I would request Government to make an announcement in this respect also.

SHRI CHINTAMANI PANIGRAHI (Bhubaneswar): There are some very important problems troubling the minds of our countrymen. One is the drought situation in Orissa, Andhra Pradesh and Madhya Pradesh. The second is concerning the rising trend of prices.

MR. SPEAKER: That has already been mentioned. Please do not repeat.

SHRI CHINTAMANI PANIGRAHI: The third thing is that many textile and jute mills are being closed down. These important problems are before the country and we should have discussions on them.

SHRI K. RAMAKRISHNA REDDY (Nalgonda): I request that there should be a discussion on the drought situation in Andhra Pradesh and other States.

MR. SPEAKER: This has already been mentioned.

SHRI PARIPOORNANAND PAINULI (Tehri-Garhwal): The cultivators in the hill areas of Kashmir, Himachal Pradesh and UP are ruined because there has been no arrangement to

give protection to their cash crops. In the last session, the Minister of Agriculture was good enough to announce that a Fruit and Vegetable Development Corporation would be formed soon. May I know what steps Government are going to take to save the kisans of the hill areas?

MR. SPEAKER: We are not knowing anything. You want a discussion.

DR. HENRY AUSTIN (Ernakulam): A serious situation has emerged in Kerala and elsewhere consequent on the precipitate decline in the price of rubber. High power delegations have waited on the Prime Minister and other Ministers. This is a very serious matter which affects the small farmers. There should be a discussion on this.

श्री हरिकिशोर सिंह (पुपरी) : अध्यक्ष महोदय, जितनी बातें यहां पर कही गई हैं उन का समर्थन करते हुए मैं यह चाहता हूं कि बढ़ती हुई बेरोजगारी, और औद्योगिक संस्थानों की तालाबन्दी, मजदूरों की छंटनी पर भी बहस हो । मैं यह भी चाहता हूं कि बीस सूत्री कार्यक्रम के कार्यान्वयन में हुई प्रगति पर विचार किया जाये ।

SHRI SHIVAJI RAO S. DESHMUKH (Parabhani): It is a long time since Government announced the long-awaited acceptance of the recommendations of the Sampath Committee regarding the sugar industry. When the constitution of the Committee was announced, it was made clear that it would give its report on giving incentives to new sugar factories because of the abnormal rise in the price of machinery and cost of projects. There are 9 new sugar factories which have been left out of this by the acceptance of the Sampath Committee's recommendations. A series of memoranda have been submitted by the National Federation and by State Federations. A number of constituencies are affected. One of these 9 factories is in my constituency. A discussion on this matter is very important. The annual rebate of excise duty which has been announced recently leaves out new sugar factories though Sampath Committee recommended about it. So there are some classes of factories where Sampath Committee's recommendations are not made applicable. This should be discussed.

SHRI AMRIT NAHATA (Barmer): I propose that half a day be reserved for discussing and reviewing the progress, achievements and shortcomings in the implementation of the 25 point programme, that will cover many of the problems raised, such as, price, public distribution system, etc.

SHRI B. V. NAIK (Kanara): Since other hon. Members have already expressed concern about the drought in Karanataka, I am not mentioning it since it is obvious that it will be discussed. Since our co-operation Minister is also here, agricultural credit in Karnataka has come to a standstill due to what they call the reorganisation of the cooperative credit societies; it has been a disaster and it should be one of the topics discussed.

श्री इसहाक सम्भली " (अमरोहा) : स्पीकर साहब अभी रामावतार शास्त्री जी ने जो चीज सजेस्ट की है और दूसरे भाइयों नें भी जो सजेस्ट किया है, उन की ताइद करते हुए, मैं यह कहना चाहता हूं कि एक दूसरा बहुत अहम मसला है जिस पर सारे हिन्दुस्तान में बड़ी बेचैनी है और वह यह है कि बोनस को किस्त अभी एम्प्लाइज को अदा नही की गई है और आप सुन कर ताज्जुब करेंगे कि बाज इंस्टीटयूशन्स ऐसे जिन्होंने अपने एम्प्लाइज को कोई बोनस नही दिया है । मिसाल के तौर पर काफ़ी बोर्ड ने अपने एम्प्लाइज को बोनस नहीं दिया है । इसलिए मैं यह अर्ज करूंगा कि इन सारी चीजों पर डिस्कशन के लिए एक दिन नहीं, दो दिन

[श्री इसहाक सम्भली]

नहीं बल्कि तीन दिन होने चाहिएं और कम से कम दो दिन हाउस और बढ़े।

SHRI K. RAGHU RAMAIAH: I said earlier that all those valuable suggestions will no doubt be considered by the Business Advisory Committee. But only one thing I should like to add. Normally, the Business Advisory Committee report comes up before the House the next day, that is Monday, in this case. Then only Members will know whether there will be extension or not. In order to enable Members to make early arrangements, I suggest, with your permission, after the Business Advisory Committee meeting is over, I may be permitted to mention to the House, what will be the duration of the extension.

11.19 hrs.

ELECTRICITY (SUPPLY) AMENDMENT BILL*

THE MINISTER OF ENERGY (SHRI K. C. PANT): Sir, I beg to move for leave to introduce a Bill further to amend the Electricity (Supply) Act, 1948.

MR. SPEAKER. The question is:

"That leave be granted to introduce a Bill further to amend the Electricity (Supply) Act, 1948."

The motion was adopted.

SHRI K C. PANT: Sir, I introduce the Bill.

STATEMENT RE. ELECTRICITY (SUPPLY) AMENDMENT ORDINANCE, 1976

THE MINISTER OF ENERGY (SHRI K. C. PANT): Sir, I beg to lay on the Table an explanatory statement (Hindi and English versions) giving reasons for immediate legislation by the Electricity (Supply) Amendment Ordinance, 1976.

11.21 hrs.

CONSTITUTION (FORTY-FOURTH AMENDMENT) BILL—*Contd.*

Clause 17—(*Amendment of article 83*)

MR. SPEAKER: We shall now take up further clause-by-clause consideration of the Constitution (Forty-fourth Amendment) Bill.

PROF. S. L. SAKSENA (Maharajganj): On a point of order. You have stated that voting take place on Monday and by that time there would be 30 or 40 clauses and many more amendments. Can Members remember what they are voting upon?

MR. SPEAKER: Do you mean to say that if voting is held up till that time, Members will not know?

PROF. S. L SAKSENA: How can I remember which amendment is being voted upon if you are going to put 100 amendments to vote together? Voting should be immediately after the clause had been discussed and the points are fresh in the minds of Members.

MR. SPEAKER: I do not think that there is any difficulty with any other hon. Member, they find it all right and it was being done at the request of the Members.

PROF. S. L. SAKSENA: It is illegal the whole thing becomes illegal. After a clause is taken up for discussion and it had been discussed, the amendments to that clause or that clause should be voted upon, he cannot remember all that after two days.

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*Published in Gazette of India Extraordinary Part II, Section 2, dated 30-10-1976.

MR. SPEAKER: There is nothing illegal about it. The House is sovereign about its procedure and since the House has agreed to this procedure, I do not think the question of legality or constitutionally arises. So, let us continue the discussion.

SHRI INDRAJIT GUPTA (Alipore): Sir, in support of our amendment No. 462, I would like to make a few remarks opposing this clause which seeks to extent the normal life of the Lok Sabha from 5 years to 6 years. I am, for the moment, ignoring the amendments which have been tabled by other hon. Members suggesting that instead of 6 years it should even be 7 years. That I leave to the hon. Minister to deal with. But, as far as the official amendment is concerned, I would like somebody to explain what is the rationale behind it. I have not been able to get any logical explanation uptill now. The argument is that elections, if they are held at the end of five years, would somehow come in the way of economic development. This peculiar idea has been floated now counterposing elections to economic development and suggesting thereby that continued life of the Parliament un-interrupted by any elections is the best way of ensuring economic development. Some people are talking about socialism even and all that. But I leave that ...

(*Interruptions*)

Anyway let us for the time being say that by economic development we mean, in the first place, the proper implementation even of this 20-point programme. I know of a 20-point programme which has been announced by the Prime Minister and which we have fully supported. Anybody can add many more points later on; private citizens who have no official status, can add and if you want to accept those points you can accept them and we may not have anything intrinsically against the merits of other points. But we have before us the 20-point programme. What I am saying is: what is this counterposing? I would like to know what is the assurance the Government wishes to give us. I do not know what its argument is in bringing forward this amendment, Mr. Gokhale should explain that. But if it is the same argument that we want to have un-interrupted life of the Parliament in order to ensure programmes of economic development being properly implemented and that elections would be a sort of a diversion from this, then I would like to know how does the experience of the last 15 or 16 months give us any confidence that merely by keeping the Parliament in session there is going to be a very rapid economic development. Everybody knows, whether they have admitted on the floor of this House or not, that during the last few months, there has been, if I may say so, somewhat of loosening let me say loosening—or a relaxation of the atmosphere of discipline and increased production and so on which had been built up in the earlier months of the Emergency; everybody knows corruption has increased again, prices are seriously used for the implementation of the 20-point programme and if that beginning to go up and have gone up substantially again and so many other things. Parliament is in session but we have not been able to stop these things, we have not been able to ensure and maintain that the kind of atmosphere of progress and advance which was there in the beginning of the Emergency is still there now. How do you ensure if this Parliament is continued without going to elections, the situation will improve? It may even get worsened. When the life of this present Lok Sabha was extended by one year, as we think, to some extent, our apprehenare constitutionally empowered to extent, at that time my party had supported that extension on the ground which I had made quite clear in this House that we understand to mean this that one year's extra life will be is not done, if implementation is only limited to making big speeches and statements and doing precious little about it, then I had warned that at the end of the one year, the situation would not be better but might be worse. I

[Shri Indrajit Gupta]

sions are coming true. In the last six months, there has been a price increase, according to Government figures, of 12 per cent. Even now so many commodities are showing an upward trend and are in short supply.

MR. SPEAKER: 12 per cent or 12 points.

SHRI INDRAJIT GUPTA: 12 per cent, it is more than 12 points. Generally speaking, the fact is that people have by and large cooperated, working class has cooperated as a result of which industrial production has certainly gone up and you have had very little dislocation or interruptions in production. All these things have been in our papers. In spite of that, these trends are again developing and a sort of feeling, a kind of atmosphere of, I should say, complacency has begun to creep in. I would say, the ruling party particularly is prone to develop a feeling of complacency that everything is going on in a sort of routine way; let us go on like this.

SHRI BIBHUTI MISHRA (Motihari): No, no, we are very serious

SHRI INDRAJIT GUPTA: This is the voice of an advocate of 7 years. He also does not feel that six years will help us to implement anything. Therefore, he says that we must have two years.

श्री विभूति मिश्र : अपनी पार्टी के लोगों से जो मेरे जिले के हैं उन से आप पूछिये कि मैं कितना घूमता हूं और कितना लोगों से सम्पर्क रखता हूं ।

श्री रामावतार शास्त्री (पटना) : इस में हमें कोई शिकायत नहीं है ।

SHRI D. BASUMATARI (Kokrathar): rise—(*Interruptions*)

SHRI INDRAJIT GUPTA: Mr. Basumatari I have not been sent by the people to approve of what you say. I have to express my opinion. If you do not like to hear, the lobbies are there outside. It is our opinion that if the country goes to the polls, that itself will have a re-invigorating effect on our democracy because whosoever goes to the polls, whether it is the Government side, the ruling party or other parties, they will have to go and tell the people what has been their performance during this period of emergency. Some parties from this side, I think, will have considerable difficulty and embarrassment in explaining what they have been doing in this period of emergency. They will also be called to account by the electorate. So, the ruling party and our party have to go to the people and explain how much we have done, how much we have not been able to do, what are the obstacles, what we propose to do in order to improve matters and let the people decide and give their verdict. What is wrong with that? I think the ruling party should say, which they cannot say openly, that they are not confident of retaining their majority. Whenever that is suggested, everybody says: no, no. So, many Congress friends with whom I had talks outside say that if we go to the polls, we will even increase our majority. Then why not do it? Why do not you come here with a bigger majority and then you would be able to go ahead much more firmly with this implementation.

SHRI C. M. STEPHEN (Muvattupuzha): We do not want to disturb the normalcy.

SHRI INDRAJIT GUPTA: Why are you counterposing it to the programme? I do not want to take much time. Let Mr. Gokhale reply to that. But I must say that on the face of it, first of all, I do not feel any necessity of it. Secondly, a widespread suspicion has been created in the public mind that this is only a motivated amendment which has been brought forward on the basis of self-interest of those Members including Members on this side, who want to remain where they are in comfortable positions of being Members of Parlia-

ment for another year or two. It is a question of self-interest. It is not something which will improve anybody's image in front of the people. They will say that these people are voting for themselves to remain in power like this. Therefore, Sir, 7 years is out of the question. But as far as the amendment stipulating 6 years agoes. I would request Government to withdraw it because upto-day—I do not think I am revealing any secret—during the course of the discussions also which our party had with the spokesmen or representatives of the Swaran Singh Committee and all that, they were not able to give us any explanation about it. They simply smiled. (*Interruption*). But I am trying to spell out the smile.

SHRI C. M. STEPHEN: Why should there be a difference between the tenures of Rajya Sabha and Lok Sabha?

SHRI INDRAJIT GUPTA: Why has there been that difference for the last 27 or 28 years? Rajya Sabha's tenure has to be for 6 years because there is a rule of retirement of one-third of its Memebrs every 2 years. Therefore, the tenure has to be a figure which is divisible by two.

SHRI C. M. STEPHEN: It can as well be 4 years.

SHRI INDRAJIT GUPTA: I am only sorry that I did not move that the life of Lok Sabha should be 4 years It would have been better. Anyway, I think this is an objectionable thing. brought forward without any convincing argument, without any kind of logic, rationale or justification with which we can go to the people of this country who have sent us and explain why the House has voted to extend its own life arbitrarily like this by one year; for what reason, and what great miracle is going to be performed in one extra year. I am not able to follow. In fact, opposite tendencies are likely to grow and develop the moment this clause is adopted—as I suppose it will be—and every Member will sit back and say:

बस ठीक है अब जनता के पास जाना नहीं है और आराम से यहां बैठे रहो। अब किसी को जवाब नहीं देना पड़े

If that kind of attitude and mood develops, it will not help you to go ahead more vigorously with economic reforms. Rather it will breed a feeling of complacency and of in difference which will be disastrous. Where will we be at the end of another year? You cannot put off the polls for all times to come. I am told that there is such an idea also being mooted, i.e. at least for 4 or 5 years, let there be no election Somebody has said: what is the use of elections at all? I do not know what we are heading for. These things will become clear as we go ahead. (*Interruptions*) All sorts of talks are going on here and there, in various groups. But to some extent the Government wants to give them a slight concession, due to this pressure which is being built up here. Therefore, they have brought this amendment of 6 years.

Mr. Gokhale, I would suggest this to you: if you are not in a position to withdraw this, instead of making any speech in reply, you also smile as you did with us when you talked to us; and let us interpret that smile as we want to. The people of the country will also interpret it.

I oppose this amendment and press my own amendment.

PROF. S. L. SAKSENA: I speak on my amendment No. 279.

MR. SPEAKER: It was not moved.

PROF. S. L. SAKSENA: I was not here yesterday.

MR. SPEAKER: So, it was not moved. Now, does the Minister want to speak?

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): No, Sir.

MR. SPEAKER: Mr. Darbara Singh.

श्री दरबारा सिंह (होशियारपुर) : स्पीकर साहब, मुझ को बहुत इस पर नहीं कहना है । हम कभी इस बात से झिझक नहीं खाते कि हम चुनाव में जायें या न जायें । इस बात का एक बहुत बड़ा प्रूफ यह है कि 1971 में एक साल पहले हमने इस पार्लियामेंट को डिजोल्व किया और लोगों के सामने गये और जनता से मैनडेट लिया, और यह मैनडेट लिया कि जो हमारे रास्ते में रुकावटें थीं उन को हम दूर करेंगे । उन रुकावटों में से एक रुकावट बैंक नेशनेलाइजेशन के बारे में थी ।

बैंक नैशनेलाइजेशन के मामेले में कितनी देर लटकाते रहे, सुप्रीम कोर्ट ने क्या फैसला लिया, वह मैं बतलाना चाहता हूं । वह यह कि गुडविल के भी पैसे मिलने चाहिएं । गुडविल क्या है ? बाजार में इसे पगड़ी कहते है । तो बजाय यह कहते कि एमाउन्ट दे दे, साथ ही यह भी कहा कि साख जो रही है, उसके भी पैसे मिलने चाहिये । यह फैसला है, और लगातार फैसले होते रहे ।

लैंड लैजिस्लेशन के मामले में बिहार में कैसे उलट-पुलट करते रहे और कहा कि मार्केट वैल्यू देनी चाहिये । फिर लगातार उसका अमेंडमेंट हम लाये और 103 तक चले गये, बजाये इसके कि कोई फैसला होता । श्री इन्द्रजीत गुप्ता जी ने ठीक ही कहा है कि हमने ज्यादा पेन्स जो लिये हैं, उसको एस्टैब्लिश करना ही चाहिये । इसी बात के लिये तो हम कहते हैं कि वक्त दरकार है, ताकि उनके पेन्स जो हमने लिये है, उनको हम एस्टैब्लिश कर पावें । हमारे दोस्तों ने ठीक ही कहा है कि बिजनेस में आना चाहिये कि कौन-कौन सी चीजें यहां पर डिस्कस हों, 20-सूत्री कार्यक्रम पर डिस्कशन हो कि हमने कितने पेन्स किये हैं और कहां लूज किया है । गुप्ता जी ने कहा कि अभी लूजनेस आई है और प्राइस इधर-उधर बढ़ी हैं । मैं मानता हूं, उस पर कंट्रोल होना चाहिये, तो यह फोरम नहीं है कि यहां डिस्कस करते रहें । लेकिन इसमें जैसा आपने को-आपरेट किया है, इसमें कोई दो राय नहीं है, हम चाहते हैं कि आपकी को-आपरेशन रहे । हम सब की यह राय है कि जो काम अभी बाकी हैं, उन सब को भी करना है और आगे पेन्स हासिल करने है । मैं किसी जज पर डाउट नहीं करता लेकिन यह नहीं कहा जा सकता है कि बेसिक स्ट्रक्चर के नाम पर इस 44वें अमेंडमेंट बिल को स्ट्राइक-डाउन न कर दिया जाये । बेसिक स्ट्रक्चर के बारे में फैसला कैसे किया जा सकेगा । सारा कांस्टीट्यूशन ही बेसिक स्ट्रक्चर हैं । क्या अभी तक किसी ने एन्यूमरेट किया है कि बेसिक स्ट्रक्चर क्या है । इसका मतलब यह है कि जब चाहे तब किसी भी बहाने से बेसिक स्ट्रक्टर के नाम पर किसी कानून को स्ट्राइक डाउन किया जा सकता है । लैंड रिफोर्म्स के लिये हमने जो भी लेजिस्लेशन पास किया कोर्ट्स ने उसमें कोई न कोई लूपहोल निकालकर लैंडलार्ड्ज के हक में फैसला किया ।

मैं भी यह चाहता हू कि इलैक्शन के प्रोमीजर को आसान बना दिया जाना चाहिये जिससे पैसा कम खर्च हो और सब को लोगों के पास जाने मे आसानी हो । जहां तक प्राइसेस बढ़ने का ताल्लुक है, उनको इलैक्शन से काबू नहीं किया जा सकता है ।

सरकार ने शड्यूल्ड कास्ट और शड्यूल्ड ट्राइब्ज की सेन्सेज के बारे में एक कमेटी

की एनाउन्समेंट की है और उसके मुताबिक सैन्सेज हो रही है। इस काम को इलैक्शन से पहले कम्पलीट करना है और उम्मीद है कि 31 मार्च तक सारी की सारी रिपोर्ट कम्पलीट होकर आ जावेगी और एक बिल की शक्ल अख्तयार करेगी । अब आगे फीसदी से जो कांस्टीटुएन्सीज बनेंगी उसमें हो सकता है कि शड्यूल्ड कास्ट की सीट जनरल सीट बन जाये और जनरल सीट शड्यूल्ड कास्ट की बन जाये । तो इस काम के लिये वक्त की दरकार है ताकि यह काम पूरा किया जा सके ।

हमने कल पेपर में साफ पढ़ा है, होम मिनिस्टर ने साफ लफ्जों में बयान दिया है कि देश भर में जो हमारे खिलाफ डार्क फोर्सेज हैं, जो तोड़फोड़ की फोर्सेज हैं, वह अपना सिर ऊंचा कर रही हैं ।

श्री इन्द्रजीत गुप्त : उन को सिर ऊंचा करने का मौका किस ने दिया ?

श्री हरबारा सिंह : यह मैं बता सकता हूं, लेकिन यह एक लम्बी-चौड़ी बहस है ।

अब यह क्रिटिसिज्म की जाती है कि इस वक्त काफी ढील है, तो फिर गवर्नमेंट को और सख्त मेजर्ज ले कर हालात को काबू में लाने का मौका देना चाहिए । इस के लिए वक्त चाहिए । जाती तौर पर मैं आज ही इलैक्शन में जाने के लिए तैयार हूं । कांग्रेस पार्टी भी इलैक्शन के लिए तैयार है । यह कहना गलत है कि चूंकि कांग्रेस पार्टी इस साल इलैक्शन के लिए तैयार नहीं है, इस लिए वह एक साल का वक्त और चाहती है । हम हमेशा इलैक्शन लड़ते रहे हैं और जीतते रहे हैं । अगर किसी पार्टी ने कोई काम नहीं किया है, तो फिर इलैक्शन छः साल के बाद हो या सात साल के बाद, उस से कोई फर्क नहीं पड़ने वाला है । जिस ने पांच साल में कोई काम नहीं किया है, वह दो और सालों में क्या काम कर लेगा ?

जरूरत इस बात की है कि पिछले डेढ़ साल में हमें जो गेन्ज मिले हैं, उन को कानसालिडेट किया जाये । आखिर इलैक्शन जरूरी है या लोगों की बेहतरी के लिए इकदाम लेना जरूरी है ? आम तौर पर सब मानते हैं कि इस अरसे में हम काफी आगे बढ़े हैं, हमारी ग्रोथ में इजाफा हुआ है, स्ट्राइक्स और ले-आफ्स कम हुए हैं । इस वजह से हमारी करेन्सी मजबूत हुई है और एक्सचेंज के सिलसिले में पाउंड के मुकाबले में पये की हालत बेहतर हुई है । इस देश की हालत बदली है और उस का असर इन्टरनेशनल फील्ड में भी पड़ा है ।

इन सब बातों को देखते हुए क्या इलैक्शन में जाना जरूरी है या गेन्ज को कानसालिडेट करना जरूरी है ? मैं यह बात इलैक्शन को पोस्टपोन करने के लिए नहीं कह रहा हूं । अगर सब लोग को-आपरेट करें, तो हम और गेन्ज हासिल कर सकते हैं । जो कोई काम नहीं करेगा, उस की शिकस्त होगी, भले ही इलैक्शन तीन साल के बाद हों, सात साल के बाद हों या दस साल के बाद हों ।

श्री इन्द्रजीत गुप्त : तो फिर दस साल क्यों न कर दिया जाये ?

श्री हरबारा सिंह : माननीय सदस्य इस के लिए अमेंडमेंट लायें । हम उन के साथ को-आपरेट करने के लिए तैयार हैं ।

हम चाहते हैं कि देश आगे बढ़े । क्या वह जरूरी है या इलैक्शन में जाना जरूरी है, जिस में हमारी ताकत खर्च होती रहे ? बाहर की बात तो छोड़ दीजिए, इस हाउस में पिछले तीन सालों में लगातार कौन कौन सी खुराफात नहीं

[श्री दरबारा सिंह]

की गई ? कागज के गोले बना कर स्पीकर के मुंह पर मारे गये । कोई काम नहीं करने दिया गया । अब जो मौका मिला है, उस का फायदा उठा कर क्यों न लेजिस्लेशन का जरूरी काम किया जाये ?

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): Mr. Speaker, Sir, we are, no doubt, discussing a clause which is important, and I have heard arguments in favour of it and against it since yesterday and this morning. I have also heard arguments in support of and against the amendments moved by quite a good number of Members It appears to me that the issue has been mixed up. It is not right to consider the question of extending the life of the Parliament by making amendments to the Constitution. As for the reasons, I will very soon mention Whether it is desirable to hold elections now or not is another thing. But I repudiate with all the emphasis at my command the statement made by my hon. friend, Shri Indrajit Gupta, that both the proposal for extending the term of Lok Sabha to six years and the amendments for extending the term to seven years are motivated by self-interest. It is certainly not. If I were to talk of self-interest, I have always seen—that is what is happening now—that you people sitting on that side know that whatever we propose is going to be passed by the majority that we command in the House and that they will get the benefit of it anyhow.

AN HON. MEMBER: Don't be so uncharitable

SHRI H. R GOKHALE: Was it not uncharitable to attribute self-interest? What is more uncharitable in this? We have been seeing this happening. On an issue like this I can understand genuine differences of opinion I am not suggesting that there is nothing in Shri Indrajit Gupta's speech which does not deserve an answer. I will give an answer. But the point is, to say that something comes from here either by way of a proposal from the Government or an amendment is a matter of self-interest, I again very strongly repudiate it. If the proposal goes through, you are all going to benefit by it. (*Interruptions*). The whole question is, when we discuss an issue of this nature, we cannot discuss it or decide it merely on considerations of benefit to my party or their party.

There are larger issues involved. Taking into account the larger issues, even if it might mean, if at all it means, that we have to take a certain criticism from some quarters, we should not be afraid of taking it. What we are doing is in the belief that if we do a thing which temporarily might appear to be unpopular—I am not going to say that it is unpopular—but, ultimately, if you are convinced in your hearts of hearts that it is in the best interest of the country, as parliamentarians, as Members representing the people, we should not hesitate to take even that criticism and do a thing which temporarily might become unpopular. It is in this background that it is necessary that we consider the proposed amendment moved by the Government in clause 17 and the amendments to it moved by some Members wanting an extension of the period from six years to seven years.

My hon. friend wanted to know and, I think, he is entitled to ask, what is the rationale. The first thing is that I have not been able to understand as to why, at any rate, the tenure of this House should be less than the tenure of the Rajya Sabha. I know that it should be six years for the Rajya Sabha. I am not saying that any odd number of years can be provided for the Rajya Sabha because after a period of two years, one-third of its Members get elected and come to the Rajya Sabha. You cannot say that the Rajya Sabha term should not be for six years. I am not on the question whether the period of the Rajya Sabha should be in-

ceased also. That is not the point: the point is that the Rajya Sabha may have to be for even number of years, but that does not mean that the Lok Sabha should be less than the Rajya Sabha or that it should not be equal to the Rajya Sabha. I have gone through the discussion in the Constituent Assembly when this Clause was discussed; while it was at that time thought that five years might be adequate, I have not been able to find any justification given then as to why this difference in the Rajya Sabha tenure and the Lok Sabha tenure has been kept. I should have thought that even at that time it should have been legitimate to say that if Rajya Sabha has to be for six years (and indeed it has to be) the Lok Sabha also should be for six years.

AN HON. MEMBER: And the Assemblies also.

SHRI H. R. GOKHALE: The same argument will hold good for the Assemblies also, but we will come to that later. I am not saying anything about the Assemblies now; I am talking about the Lok Sabha.

So, there is a rationale behind this. And the other thing to be remembered is that if you say that we are proposing six years because of some benefit likely to accrue to us, that is also wrong because we are already nearing the end of the six-year period and if this sixyear period is accepted I am sure nobody is going to say that by this Amendment we have got our tenure extended. I don't see the logic in that. We need not explain to the people; the people already know that there is no question of our getting another year by the Government's proposal to amend Art. 17 because this is a matter where the people know that for good reasons—the reasons were supported by them at that time—there had to be an extension of the period of the Lok Sabha and the Lok Sabha is going to continue for the whole period of the sixth year which is running now, whether or not this Amendment is accepted. Therefore, where is the question of self-interest here, so far as this proposal is concerned? In fact, such an Amendment can apply only to the next Lok Sabha onwards—not to the Fifth Lok Sabha, but to the Sixth Lok Sabha onwards. We are forgetting this fact. Therefore, when we go to the people, I am sure that those who want to understand it in the correct spirit will not ask this question when we talk of a six years' period.

AN HON. MEMBER: A temporary thing is being made permanent.

SHRI H. R GOKHALE: I am limiting myself to the attribution of a motive of self-interest which does not apply to us so far as making the life of the Lok Sabha six years is concerned. One may have different views on the merits, as to whether it should be six years or not permanently; that is a different matter. But self-interest certainly does not come in when Government proposes that it should be six years in future and not five years. Of course, seven years has also been proposed, but I will talk about it a little later. I don't think that some of the reasons given are irrelevant; most of the reasons given are relevant. But at the moment I am not on the question as to whether it should be made six years or seven years permanently or not. I am on the question that it is not in ourself interest and I have put forward the argument that, in my view, it has some basis, it has some rationale behind it. For example, when we extended the period last year, our friends were convinced at that time that we should have one more year, that we were in a state of emergency, that the country had launched on a political and economic programme—and the 20-point programme was announced soon thereafter. So, the whole idea was that in the period of emergency we should not only go ahead with this programme but we should tighten up our belts in respect of all walks

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of our political and economic system. The idea was to bring in more discipline in all spheres of our activity and our life, and it is conceded that at least in the earlier stages of the declaration of the Emergency, this did happen. I am not saying that it is not there now, but it did happen and it has been accepted by most people in the country that we had a better sense of discipline and that the Emergency gave us certain gains which ought to be consolidated. People have asked me wherever I have gone—and I am sure they have asked you and my friends on this side—why the Prime Minister did not do this before and why she waited all these years before Emergency was declared. All these things are known. I think it is the limit of tolerance on the part of the Prime Minister that she held on and tolerated all the nonsense going on in this House and outside before Emergency was declared. And the fact is that, when I was in England recently, I heard her being spoken of by the ordinary, common people in the country. Don't look at only the newspapers; I know what they are; but if you talk to the common people, they say 'we are watching with great interest what is happening in India' and some of them have even said 'we know the situation in which Great Britain is today and we think what is needed immediately here is to have a Mrs. Indira Gandhi in England'. This happened only last year. I agree with Shri Indrajit Gupta that if there is any slackening of discipline, if there is any slackening in our efforts, we should look at it ourselves by way of examining what we have done, where we have failed and what we ought to do and in what way so that it becomes more effective. I agree with all this But the fact remains that the programme has been accepted, that discipline has been imposed and that we have taken a look at everything now with a different perspective This is a fact which no person can deny. In this situation, I am only saying that we should not link up the question of making the life of the Lok Sabha six years permanently with this. For ourselves, we are not doing it permanently for more than six years....

SHRI JAMBUWANT DHOTE (Nagpur): Will you make a provision for the right of recall.

SHRI H. R. GOKHALE: We talked about the right of recall many times when we discussed the Election Law amendments—and perhaps the first casualty will be people sitting on that side. But that does not matter. The point is....

SHRI JAMBUWANT DHOTE: I am for this clause and that is why I am asking whether you are making a provision for the right of recall.

SHRI H. R. GOKHALE: I am not talking about Mr. Dhote personally but in general, about those who are crying hoarse about right of recall. Of course, I am not doubting the integrity, the honesty and sincerity of their opinion, but the point is, at the moment, we have to look at the whole system and the large population of this country—250 million in the last Election and seven million more in the coming elections—and the fact that we have to go to the polls with the use of symbols and still maintain our independence and fairness at the elections when we say that we must have the right of recall in this country—anyway, I am not discussing that issue now; we can discuss it at the appropriate moment. Mr. Dhote can also then say whatever he wants to say and it will be given due consideration and we will all join him in discussing the issue. But that is beside the point at this moment.

Therefore, I was saying, let us not link up the question of six years with the question whether there should be

elections now or not, or the question of making it seven years with the issue of whether there should be elections now or not. Let us look at the whole thing in its correct perspective. I am not going to accept the amendment not because I think that the arguments given or the reasons given are irrelevant but because I think making the life of Parliament longer than for six years permanently is not very desirable.

Now, having said this, I would like to mention that we are now in a situation where it is not as if those forces which led to de-stabilisation are still not there or the forces which wanted to create disorder and wanted to create an atmosphere of violence or wanted to create an atmosphere in which democracy would have fallen, have disappeared, but emergency has really helped to make our democracy survive and it has given us additional strength. If I may go still further, we have asked ourselves 'Has this situation disappeared'? And the answer is that it has not My own view is, and as has been said by other people more knowledgeable than I am, outside the House also, that all these forces which appear to be dormant are not really dormant. They are continuing and going ahead with their activities in the same way, perhaps in a more dangerous way than before. Let us take not of this fact...

2.00 hrs.

SHRI INDRAJIT GUPTA: You defeat them at the polls.

SHRI H. R. GOKHALE: For example, you can defeat me or I can defeat you. I can defeat you because you have a sincere belief in the democratic process. I can understand if Mr. Indrajit Gupta stands for election against me, may be he will defeat me or I will defeat him. But if somebody stands for election against me whose sole purpose is to destroy the election process, how can you defeat him at the polls, when they say that they do not believe that there is something linke a democratic process and create disorder by processes which are not democratic? Therefore, this argument may apply to you but will not apply to the others to whom I am referring.

I want to tell the House with all the sincerity and seriousness at my command that I do not think that we have come to the situation where it is desirable, in the larger interest of the country, to go to the polls now. I am not afraid of going and telling the people. We need not be given a sermon as to how we will face the people. We have faced the people in five elections, and we will face them again. The situation is not that bad. In fact, the people are now in support of the Congress Party more than ever before. Therefore, to say that we are afraid of elections is entirely untrue. If we were actuated only by considerations of coming back to power and utilising the elections only for that purpose, probably this was the best time to go for elections. But we do not consider it from that point of view, because, we have to consider the impact of elections, what effect it makes on our economic situation, what effect it makes on our political situation, what effect it makes so far as the divisive and destructive forces which we have been trying to subvert till now are concerned. All these have to be taken into account before we take a decision as to whether we go to the polls now or not. No body need be worried as to what will happen to us. We will take care of ourselves. Let us be sure about that. This is not to say that this is going to be the beginning of the end of the election process in this country. In this country, certainly we are not abandoning elections. In fact, we believe that elections are the only way which the democratic will of the people is reflected. That has always been our view and that will continue to be our view for all time to come so far -

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as we in the Congress Party are concerned and so far as you, Mr. Indrajit Gupta, are concerned. But the point is this. Do we divorce realities from theoretical considerations? I also know that, if you look at it merely from the theoretical or democratic angle, it is better to go to elections sooner rather than later. But when we consider this from the larger angle of what is in the interest of the country, taking all these into account, I have good reasons to state before this House that time, though ripe for the Congress Party to come back to power, is not ripe for elections in the larger interest of the country. That is what I would like to state before the House categorically.

I also want to take the House into confidence and say that I will bring a legislation in this House for extending the period of the House, not by extending it permanently as is suggested in the amendments, but on the real and genuine grounds that the existence, the continuance and the reality of the emergency demands it. nd I am doing this not on my own I ave been hearing all the hon. Members who have spoken on their mendments; I have considered their rguments as sufficiently strong, articularly on this question as to the conomic situation and the political tuation, the time required to make complete impact of the programme hich we have undertaken, all these e valid grounds and, therefore, I n doing it more in response to what he hon. Members have said in support of their amendments for seven years than for any other consideration I am bringing the Bill...

SHRI PRIYA RANJAN DAS MUNSI (Calcutta-South): You should appreciate the legality and possibilities of the amendments which we have moved for other Clauses also.

SHRI H. R. GOKHALE: When we come to the other Clauses, we shall see about the legality and other things. I am now on Clause 17. That is all I know. I have somewhat a compartmentalised brain. Therefore, I would deal with clause 17 only. My friends asked when I would bring the Bill and I did say that I would bring the legislation before the House for extending the period by one year.

SOME HON. MEMBERS: Would it be brought during this session?

SHRI H. R. GOKHALE: Let us not be impatient. People have been asking me since yesterday and they asked me even today and some of my colleagues also asked, but I did not tell them what I was going to say because this was a matter in which before I tell anybody, I must take the House into confidence It is not that I did not have confidence in them. I have full confidence in them, but there are certain proprieties to be observed and the propriety required that I must tell this first to the House.

I do not want to take any more time; I have only to say a little more. While I have stated that I will bring the legislation before this House for extending the period of the House under the emergency provisions, I would also say that most probably, I will bring the legislation in the current session of Parliament.

I have spoken about the clause, about the amendments and also about the elections With your permission, Sir, I want to digress a little and I want to make an appeal to you. I have been listening to the discussion which has been going on the clauses for the last two days, and while some clauses were adopted, I did not have any suggestions to make for any change in those clauses, I have noticed that there are a few other clauses, not many, where in the light of the suggestions which emerged from the House, it may be that I will have to be responsive to what the hon. Mem-

bers have suggested, I will take into consideration the suggestions which will be made even today. Maybe, in a few clauses, not more than three or four, I will have to bring in amendments. I cannot, however, bring them today because the clauses have yet to be discussed.

MR. SPEAKER: You mean the clauses which have been discussed, but not voted.

SHRI H. R. GOKHALE: With regard to the earlier clauses, I am not bringing any amendments. I am only talking about the clauses which will be discussed today and later. Even in private discussions, so many good suggestions have have been made and after hearing the hon. Members this side and that side, I think, it is my duty to consider all these suggestions and to come before the House, if necessary, with amendments. I only crave your indulgence to allow me time till Monday for bringing these amendments.

SHRI INDRAJIT GUPTA: I welcome very much this statement by the hon. Minister that he is willing to be responsive to some of the good suggestions. But why does he foreclose the issue for the disuses discussed and approved earlier? Why is he suddenly going to do this now? Many good suggestions have been made about the earlier clauses also. This House is master of itself and if anything has to be changed, it can be modified and it can do it.

SHRI H. R. GOKHALE: I will request my hon. friend to wait and see.

SHRI INDRAJIT GUPTA: I said this only because you said that it would apply to the clauses which have not yet been discussed.

SHRI H. R. GOKHALE: At the moment, unless Government have made up their mind about the changes which regard to the clauses which have already been approved, it is not proper for me to say that I am going to reopen those clauses. If it happens ultimately. I would make an appeal to the Speaker and I will make an appeal to the House. But, today, I cannot say anything about those clauses.

That is all, I want to submit.

Clause 18—(*Amendment of article 100*).

SHRI NIMBALKAR (Kolhapur): I beg to move.

Page 6, lines 1 and 2,—

for "clauses (3) and (4) shall be omitted" *substitute*—

'in clause (3) for the word "one-tenth" the word "one-twentieth" shall be substituted'. (256)

MR. SPEAKER: Does the Minister want to say anything?

SHRI H. R. GOKHALE: Nothing.

MR. SPEAKER: Clause 19. No amendment has been moved.

SHRI H. R. GOKHALE: I have no comment as there is no amendment moved.

Clause 20— (*Substitution of new article for article 103 Decision on questions as to disqualification*).

SHRI BIBHUTI MISHRA (Motihari): I beg to move:

Page 6,—

for lines 21 to 25, *substitute*—

'the question shall be referred for the decision of the President.

(2) Before giving any decision on any such question, the President shall obtain the opinion of a Commission consisting of a single Judge of the Supreme Court who shall be appointed by the Chief Justice of India for a term of six years. Casual vacancy in the Commission, if any, shall be filled in like manner. For this purpose, the Commission may hold such inquiry as it thinks fit.

[Shri Bibhuti Mishra]

(3) The President shall act according to the opinion given by the Commission." (10)

SHRI C. M. STEPHEN: I beg to move:

Page 6, lines 14 to 16,—

omit ", found guilty of a corrupt practice at an election to a House of Parliament under any law made by Parliament," (111)

Page 6, lines 21 and 22, —

for "of the President and his decision shall be final"

substitute—

"to a Tribunal to be constituted in such manner as the Parliament by law may prescribe and its decision shall be final" (112)

Page,—

omit lines 23 to 25 (113)

SHRI P. NARASIMHA REDDY: I beg to move:

Page 6,—

for lines 23 to 25, *substitute*—

"(2) The President shall decide any such question in consultation and in accordance with the opinion of the Election Commission which may, for this purpose, make such enquiry as it deems fit" (216)

SHRI EBRAHIM SULAIMAN SAIT. I beg to move:

Page 6, line 24, —

after "shall consult" *insert*—

"and thereafter act according to advice of". (307)

SHRI PRIYA RANJAN DAS MUNSI: I beg to move:

Page 6, —

for lines 21 and 22, *substitute*—

"the question shall be referred for the decision of the Election Tribunal headed by the President and the decision of the Tribunal shall be final." (410)

Page 6, —

for lines 23 to 25, *substitute*—

"(2) The Election Tribunal shall consist of the President of the Republic as the head and members of the Election Commission and Chief Justice of Supreme Court including the Chief Justice of High Court where the member belongs as member of the Tribunal. If there is a dispute or tie in the decision of the majority members of the Tribunal then only the President's own decision shall be final. Otherwise the President shall announce the decision having the majority opinion from the Tribunal." (411)

SHRI INDRAJIT GUPTA: I beg to move·

Page 6, lines 21 and 22, —

for "of the President and his decision shall be final"

substitute "of the House to which the member belongs and the decision of the House shall be final". (463)

Page 6, lines 23 and 24, —

for "President and his" *substitute* "House and its" (464)

श्री विभूति मिश्र क्लाज 20 में मेरा अमेंडमेंट नम्बर 10 है जिस में मैंने कहा है कि लाइज 21 से 25 तक के बजाय यह रख, जाए

"the question shall be referred for the decision of the President.

(2) Before giving any decision on any such question, the President shall obtain the opinion of a Commission consisting of a single Judge of the Supreme Court who shall be appointed by the Chief Justice of India for a term of six years. Casual vacancy in the Commission, if any, shall be filled in

like manner. For this purpose, the Commission may hold such inquiry as it thinks fit.

(3) The President shall act according to the opinion given by the Commission."

इलैक्शन कमीशन के बारे में लोगों का खयाल यह है कि इसकी बहाली एग्जैक्टिव आर्डर्ज से होती है । किसी को क्वालिफाई या डिसक्वालिफाई करना होता है तो उसमें एग्जेक्टिव का इंटरेस्ट आ जाता है । राष्ट्रपति जी का जैसा दर्जा है उसको अच्छी तरह से सुशोभित करने के लिए यह जरूरी है कि इलैक्शन कमिशन के बजाय एक सुप्रीम कोर्ट का जज बहाल किया जाए और वह इन सब बातों को देख कर फैसला करे और राष्ट्रपति को अपनी राय दे । इससे राष्ट्रपति का स्थान ऊंचा हो जाता है और उनके प्रति लोगों की सम्मान की जो दृष्टि रहती है वह सम्मान की दृष्टि और भी बढ़ जाती है । अगर इलैक्शन कमिशन की राय ले कर किसी की डिसक्वालिफिकेशन को हटायेंगे तो लोग कहेंगे कि इसमें एग्जेक्टिव का इंटरेस्ट था इस वास्ते फलां आदमी को डिसक्वालिफाई किया और क्वालिफाई किया । इसलिए राष्ट्रपति के हित में भी यह होगा और हमारे हित में भी होगा कि सुप्रीम कोर्ट का जज इसके लिए हो जो सब बातों को देखकर कर राष्ट्रपति जी को रिपोर्ट करे ताकि न्याय हो सके ।

SHRI C. M. STEPHEN: I am glad he hon. Minister has given an assurance that he is keeping an open mind and that in the light of the discussion that takes place, he may think of moving some amendments. I have moved three amendments to this clause. One amendment is based on the principle of law whereas the other is based on the principle of Parliamentary jurisprudence. Sub-clause 1(b) of proposed Article 103 reads:

"as to whether a person, found guilty of a corrupt practice at an election to a House of Parliament under any law made by Parliament, shall be disqualified for being chosen as and for being a member of either House of Parliament, or of a House of the Legislature of a State, or as to the period for which he shall be so disqualified, or as to the removal of, or the reduction of the period of, such disqualification, the question shall be referred for the decision of the President and his decision shall be final."

In our Constitution we are putting in a provision which says that despite a corrupt practice proved under law made by Parliament whether disqualification should not be imposed, is a matter to be referred to the President. This is likely to be mistaken as attempting to protect corrupt practice. I am putting the question whether we should have such a clause to be incorporated in the Constitution of India. This is a document which will be accepted and quoted internationally. Here is a clause which speaks about 'corrupt practices', which speaks about proven guilt of the corrupt practices and it shows an anxiety to protect a person found guilty of corrupt practices. It seeks to invoke the jurisdiction of the President in order to protect a person found guilty of corrupt practice. I am not pleading that such a contingency should not be protected against. My question is whether it should find a place in the Constitution of India. If we can have the same thing achieved by other means should we not try to do so? That is my question.

The word 'corrupt' has been misinterpreted and mis-understood. 'Corruption' has its own connotation in English language. It is different from the way it is used in the Representation of People Act. But, nevertheless, 'corruption' has its own connotation. This is a basic law of the land. Therefore, I plead, if we can avoid this clause, we must try.

[Shri C. M. Stephen]

I think we can avoid this clause. The clause is unnecessary according to me.

In the Constitution there are certain provisions which speak about the disqualification. Article 326 says that a person is entitled to be registered as a voter only if he is not otherwise disqualified for corrupt and illegal practice under a law passed by the respective legislature. Therefore, if a person is found to be guilty of corrupt practice, Article 326 says, he shall not be registered as a voter and the disqualification to be imposed on that person is to be provided for by the respective legislature. That is the delegated authority contemplated in Article 326.

Article 327 specifically authorises the Parliament to make laws for the purpose of election—

> "Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to either House of Parliament...."

Again Article 329(b) gives a delegated authority to the Parliament to make law for the purpose of election and for the purpose of setting aside an election and for the purpose of setting up a machinery which should consider setting aside of an election.

Sir, my point is this. The Constitution makes provision whereby this House has got the power to enact legislation with respect to the election, with respect to the disqualification, with respect to whether the disqualification was there or was not there. Now, exercising that very delegated authority, we have enacted the Representation of the People Act. That Representation of the People Act speaks of corrupt practices Section 123 speaks as to what are those corrupt practices. Section 99 says that when an election petition is tried the court shall at the time of making order under section 98 make an order regarding the point whether that was a corrupt practice or not and also the names of persons if any who have been proved at trial to have been guilty of any corrupt practice and the nature of the corrupt practice. So, this elaborate procedure is there. Section 100 says that if a person is found to be guilty of corrupt practice the High Court shall declare the election of the returned candidate to be void. Here is something under the delegated authority. We have enacted the Representation of the People Act. The Representation of People Act provides that if a person is found to be guilty of corrupt practice the election shall be declared void. We made the enactment under Section 8A in 1975, that is, last year, to say that in case a person is found guilty of corrupt practice, under section 99, the case has to be submitted to the President and the order of the President is final. This is the entire law with us. Therefore, the point I am trying to make in this. When you say in case of corrupt practice it should be referred to the President, are we not withdrawing the delegated authority? It comes to that. I say this because under delegated authority law is passed It is in force now Nothing is done about that law. That still remains in force. Is this delegated authority to be taken away?

Section 102 says, disqualification as per the provisions of the law. Article 326 speaks of the disqualification for corrupt practice. The finding as to how the disqualification takes place is a matter which under the provision of the constitution stands delegated to parliament. In this new clause, does it mean that this delegated authority is to be taken away? Or does it mean that the law will still continue to remain in force? This is the point which I would urge for the consideration of the hon. Minister. Then, there is this peculiar thing. The High Court declares an election as void. Disqualification as defined in the Representation of the People Act is for being chosen as or to continue to be a Member of the House. Even

fter, the elections are declared void, he question still remains as to whether he will remain as a Member of he House or whether he will be hosen as a Member of the House. This still remains an open question. That arises out of this provision. This s a contradiction according to me. As ar as I could understand the Representation of the People Act, under the delegated authority, contains provisions on this.

Even under the provision of this Act, the whole thing has got to go to the President. If a Member's election is declared void by the court under Section 8A for corrupt practice, then that must go to the President and the President must declare whether that disqualification is attached to him or not and whether that Section stands annulled by this provision or not. If a section does not stand annulled by this provision, then there is an order by the President under the Representation of the People Act saying that a person stands disqualified for such and such a period. Then, after this, how can a question arise? Your amendment says:

'if any question rises as to whether a person found guilty..... ..... shall be disqualified.. .'

How can this question rise once an election is set aside? A question can arise as to whether he should be chosen as or he will continue as a Member of the House. The question can also arise as to whether the disqualification should be lifted or not. Question can also arise as to the term of his disqualification whether it should be varied or not. How can a question arise whether the disqualification must be attached to that person as to whether he should be chosen as or continue to be a Member of the House? In my humble submission and view, once an election is declared void, the question does not arise whether he shall be chosen as or can continue to be a Member of the House. The only question that can arise is whether the disqualification should be lifted or not.

That is the intention of Section 8A. That section says that if there is a disqualification, that person can move the President for lifting it. That is the only question that can arise—not whether he should be chosen as or can continue to be a Member of the House. This question cannot possibly arise as far as I could see. This is the contradiction.

I find one more difficulty. Under Sec. 8A of the Representation of the People Act, if the President has ordered that there is a disqualification, then Section 102 will immediately operate. Section 102 (e) says that a person shall be disqualified for being chosen as and for being a Member of either House of Parliament 'if he is so disqualified by the provision'. There is a law for the purpose made by Parliament. This is a law made by Parliament and so, if under that law, a person is to be disqualified, then by the operation of Art. 102, which is a mandatory provision, that person shall be disqualified for being chosen as and for being a Member of the House.

In spite of that, this remains an open question. Section 102(e) and 103 become mutually contradictory. In that case, there is a contradiction between the provisions of the Representation of the People Act and this provision; there may be contradiction between Art. 102((e) and this particular amendment that you are proposing. There is an unacceptable thing about the whole thing because a person found to be corrupt, his election being declared void, still is entitled to remain in the House Even if the election is void, he is still allowed to be canvassed. I can understand the disqualification being canvassed. This is what you are doing.

I would therefore submit that this amendment which is sought to be

[Shri C. M. Stephen]

written into the Constitution is a very dangerous amendment This Constitution will go out and tell the people that you will protect a person found to be guilty of corrupt practice which is taken care of by the provisions of the Representation of the People Act. Let this Constitution not carry 'hat stamp. According to me this is a matter which is taken care of by the Representation of the People Act. I do not see how an amendment of the Constitution is necessary for this purpose. We have got exactly the same wording in S. 8A of the Representation of the People Act. Leave it to the Representation of the People Act.

12.29 hrs.

[MR. DEPUTY-SPEAKER *in the Chair*]

Leave it to be delegated authority of Parliament. This is the submission I have to make. Otherwise, it will be a very dangerous departure from the whole position we have been following. As far as I could see, this has got very serious implications. I would be seech the Law Minister to consider all these aspects and to keep an open mind on the question.

The reply wanted is to the simple question. Why does he think that sub-clause (b) become absolutely necessary? Why does he think that sec 8A which is worded practicallv the same way as sub-clause (b) is not sufficient? Why is it that in spite of sec 8A you are making it mandatory on the High Court to declare an election void and stil trying to canvass the question as to whether in spite of the voidness of the election the new arrangement must be effectuated. The whole thing is confusing, absolutely contradictory. Therefore, the whole thing may be given a deeper look.

Another thing. This is with reference to sec. 102. Take the case of an insolvent. An undischarged insolvent is disqualified. This was at a stage in which money power is prevailing. A person may be perfectly upright, perfectly above board, serviceable and acceptable to the people, but under adverse circumstances the person might have become insolvent. We have said that that insolvent fellow is disqualified. Once an insolvent, there is no provision to go to the President and say 'Please lift my disqualification'. You are concerned about the person who has received bribe, who is guilty of corrupt practice illegal gratification in the election. For him you are seeking lifting of the disqualification but not for this type of person under sec. 102. From the whole thing, you lift out only the person who is found guilty of corrupt practice for favourable treatment. Is this correct discrimination? Should our Constitution carry the stamp of this discrimination and extra solisitude for what is termed as the guilt of corrupt practice, as understood in the international world, as understood in the English language. That it has got a different connotation in the Representation of the People Act is not understood by people, which means this Constitution will stand defaced to that extent. We can drop that subclause without any difficulty at all. What you want is already taken care of by section 8A If a further amendment is necessary, bring one to the Representation of the People Act rather than to the Constitution. This is the submission I have to make. This is the purpose of my moving the amendment. This is what I want to bring out bv my amendment. My amendment as worded may not serve the purpose, but if the idea is accepted, Government may consider bringing in some change on the same lines which can be incorporated. Let this matter be left to the law. This is not a matter for the Constitution The law will take care of itself. At that time, we can provide what should be done and what should not be done. With these words, I conclude.

SHRI P. NARASIMHA REDDY (Chittoor): I support the arguments of Shri C. M. Stephen. In pursuance of the assurance given by the hon. Minister this morning that if reasonable suggestions are made, his mind is open

for reconsideration, I am making this request. With reference to the functions of the President, we have already passed an amendment yesterday amending the clause under which the President is bound to act according to the advice tendered by the Cabinet. In which case, if we make presidential decision on disqualification of Members final, it will be reducing democracy to a mockery and as Mr. Stephen pointed out, it may lose all credibility for no purpose. If the article stood as it stood originally, no harm was done. Parliament may by law provide for a suitable agency for deciding upon questions of disqualificaton. If my understanding is right, according to the Representation of People Act, courts can go into the question of validity of election on the grounds of corruption and can set aside an election or declare an election void. But the question of disqualification used to be left to the Election Commission on whose opinion the President was acting upon. Now we make the opinion of the Election Commission purely consultative and not binding on the President. In my opinion this will not do and it is not consistent with our democratic values and norms.

SHRI EBRAHIM SULAIMAN SAIT (Kozhikode): This is an amendment with regard to the disqualification of the Members of Parliament or Assemblies on the basis of corrupt practice. Mr. Stephen an eminent advocate has dealt with the matter at great length and to a great extent I agree with what he said. My amendment is simple; the Election Commission's advice should be final. So far as I know the decision of the Election Commission with regard to election matters were open to be questioned in the Supreme Court. By this amendment it is stated that the President will take a final decision after consulting the Election Commission. But he will be guided by the Council of Ministers; we amended article 13 to say that there shall be a Council of Ministers with a Prime Minister at the head to aid and advise the President who shall in the exercise of that office act in accordance with such advice. So, the President will have to act in such cases in accordance with the advice of the Council of Ministers. He will be a puppet in the hands of the Cabinet and such a situation has to be avoided. Therefore I say that the President shall consult the Election Commission and its advice should be final. You may even make Parliament supreme and not allow things to be decided by the Council of Ministers through the President. As it is, it means that the President is powerless and all those powers will vest in the Ministry.

SHRI PRIYA RANJAN DAS MUNSI (Calcutta—South): I partially agree with what Mr. Stephen said. I sincerely feel that if the article is amended in the way suggested, it will be a fantastic provision for the future. At present the qualification or disqualification is decided under the Representation of the Peoples Act. Without attributing any ill motives to the highest chair in the Republic, namely the President I should say that if the decision to say whether somebody is qualified or disqualified is left completely to the President, taking only the advice of the Election Commission, may be tomorrow there may be some political interpretation and some political moves in favour of candidate x or y. The reason is simple. We know how the President is elected in our country; no doubt is a democratic way. The people know in general that the President also is questioned or chased or challenged during the time of the election and immediately after the election is over, the same people accept him as the head of the State. But in a Parliamentary system the political will and political wish of a group or a party at that moment does not come in the way. Now, supposing a Member who has been disqualified belonged to 'X' party and he makes an appeal and submission to the President to withdraw the disqualification in his case and supposing the President partially does that without making any door open for him, that Member then directly en-

[Priya Ranjan Das Munshi]

joys patronage of the Government or the Council of the Ministers. But if a Member belongs to 'Y' party having the similar charges makes an appeal and if the charges are ultimately found proved then the very concept of the President and the very concept of our parliamentary system will be eroded and the fibre of democracy will further be loosened. For that reason, I feel that in a matter like this, it is very clear for all of us to mention that the functioning of the President should always be democratic and impartial. Why? It is known to all developing nation, specially India, that the big money plays the big role and where the big money plays a big role, it automatically invites corruption and since it invites corruption, the question at that stage will arise as to make the complaint and prove the corrupt charges. It has also been found in our country that on some occasions when the President's election was held between Shri V. V. Giri and Shri Sanjiva Reddy and between Shri Subba Rao and Shri Zakir Husain, the monopoly Houses in our country openly supported Mr. Subba Rao to defend a particular class. But it is a great fortune that the people of this country and in their collective wisdom did not support the monopoly Houses' candidate. We believe in parliamentary system and we do not always think that we should be following a particular pattern of political system or we should always have a like-minded person as the Head of the State. For example, some person belonging to the counter-revolutionary force or some other force whom you do not like to manipulate or manouvre at that stage can sit as the head of the State and at that stage this Parliament may not be in majority or there may not be a majority rule of this party in various States. Then at that stage the process of victimisation will begin. It can begin in a very big way and it can create a very serious situation in the country. At that time you will not be in a position to amend the provisions of the Constitution because the Parliament would not be in majority of a particular political party. So we should not only think of the present situation but we should also think of the future. Therefore, in such matters we should be very clear and specific.

Now, in regard to the disqualification of the Members, it has been spelt out very clearly in Articles 102 and 103 of our existing Constitution. But I would like to know why a Member chooses to be elected to the House of the People. Two things are very clear. One is that he wants to serve the people through parliamentary system and the second point is that he wants to serve the people through a parliamentary system having some political ideas. Now, the charges are very clear, that is, there are corrupt practices and other things. But let us be very clear on one point. I wanted to bring an amendment to the Articles 102 and 103 through a private resolution, but some people laughed at me for this. The amendment was if we wanted to make democracy more lively and if the democracy was to function under the parliamentary system and more actively, then the Members of Parliament must give first priority in regard to their duties to the people and the next priority should be given to other duties. There is a provision that if a Member holds office of profit he should be disqualified. I agree with that. But without any disregard to any Member, I would like to point out that there are many Members who are engaging themselves as lawyers, jurists, doctors, etc. When they go before the people, they say that the country needs intellectuals and on that basis, they are elected by the people. But during their parliamentary career, when the session is on whether it is an emergent session or war-time session, and when the business goes on in the House, you will find them utilising their intellectual wisdom to build up their empire either in the Supreme Court or in a university or in a nursing home; they are giving their priority there, I say, have priorities. When the session is

n, the Member is constitutionally, gally and politically committed to rve his constituency. I know as a lember of Parliament, I can get extra dvantage in judiciary using my Parliamentary Status thereby depriving the cause of the people. I do not lispute their wisdom. Now, you are ringing forward a provision arming he President with one more extra power to decide whether a Member is qualified free from corrupt practices or not. So my amendment was very simple. If you at all feel that there should be some institution, let there be an election tribunal headed by the President of the Republic. It should consist of the members of the Election Commission and Chief Justice of Supreme Court including the Chief Justice of High Court where the member belongs as members of the tribunal. If there is a dispute or tie in the decision of the majority members of the Tribunal then only the President's own decision shall be final. Otherwise, the President shall announce the decision having the majority opinion from the Tribunal.

SHRI M. KATHAMUTHU (Nagapattinam): The clause 20 of this Bill seeks to amend Article 103 of the Constitution by adding one more ground for disqualification of the Members. This is a welcome move. Everybody knows and nobody can deny the role of money during election time. So, the corrupt practices during elections, whatever may be its form, should be put an end to. But, here the question is, who is to be empowered to take decisions on such matters. Our amendment number 463 seeks that the House to which the Member belongs, shall be competent to take the decision and its decision shall be final. This would be the correct approach. But as per clause 20 of the Bill, even after modification of Article 103, the authority is vested in the President. In our opinion, it will be proper and appropriate if the case of the person found guilty of corrupt practices is taken up by the House to which the Member belongs, instead of its being referred to the President. When we accept the concept of Parliament being supreme and when we have promulgated the democratic way of functioning, I cannot understand why we should hesitate to give the right to enable the House to take a decision on the conduct of its own Members. We feel that this Article should be amended in this manner. It will strengthen the supremacy of Parliament. So I request the Law Minister, on behalf of the CPI group to give thought to our amendment and accept it.

As our amendment No. 464 is of a consequential nature, I need not explain further.

I again request the hon. Minister to accept our amendment.

THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DR. V. A. SEYID MUHAMMAD): In regard to the amendment which has been proposed by Mr. Indrajit Gupta and his friends, we have considered the matter. The Swaran Singh Committee had recommended it after a sober consideration we have included this provision, as proposed in clause 20. No sufficient reason has been given to change our proposal.

SHRI C. M. STEPHEN: Is this an adequate reply? We are also here in existence in this House—not only the CPI group, as MPs. We have moved amendments and spoken on them.

MR. DEPUTY-SPEAKER: He thought that that was sufficient for you.

SHRI H. R. GOKHALE: I have heard the arguments of my friend, Mr. Stephen and the other arguments also. And I had the good fortune of knowing these points, because he had briefly discussed them with me earlier. I do not think the difficulty which Mr. Stephen mentioned, would

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arise if we take the whole scheme into account. It is true that the present amendment is for Article 103; but we have also to consider the scheme contained in Articles 102 and 103 and then go to Article 326. If you look at Article 102, the disqualifications referred to therein—I need not read all the disqualifications—are "for being chosen as" and "for being" a Member. There is a distinct difference between a disqualification on these counts, and a disqualification which arises after the election. There is a clear dichotomy, that in Article 102, in respect of those 3 or 4 matters which are mentioned there, it is a disqualification for "being chosen" or for "being" a Member i.e for continuing. For example, a man may become insane after becoming a Member. He can become insane subsequently; he can, *e.g.* hold an office of profit after being a Member. That will disqualify him. Article 102 which deals with "being chosen" and "being", is not touched. So far as Article 103 is concerned, we have a clause in the amending bill—and I am particularly referring to clause 1(b)—viz. the new clause. It is not there in the existing Article 103. Now, a reference to 'corrupt practice' is already there in Article 326. Article 326 in fact contains this I will read only the relevant portion:

> "The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage;.... law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice,...."

Therefore, there has to be a law in respect of a corrupt practice under 326. It is true that with regard to the disqualification arising as a result that of a corrupt practice having been proved under the existing law, the method which was provided for is not the same as the method which is provided for here. One may argue that this method which we are proposing is good or bad, but there is a difference between the two methods.

It is also true that under the existing law relating to elections, the Represention of the People Act, after the amendment made by adding section 8A, the question of a person being disqualified from being chosen or continuing as a Member was taken out of the purview of the courts. The original position was that if the courts came to the conclusion that a corrupt practice had been proved, they had no choice, the disqualification for a period of six years automatically followed. That was amended, but it was said that the power of the courts to determine whether an election is void or invalid on the ground of an alleged corrupt practice would remain. Even now that position is not touched. For example, this does not mean that you cannot go to a court for a declaration that an election is void on the ground that a corrupt practice has been established It is still the function of the court, but the question as to whether, as a consequence of the proving of a corrupt practice in a court of law, a disqualification should follow or not is the only thing which is provided for here.

SHRI C M. STEPHEN: Is that not provided for in section 8A of the Representation of the People Act?

SHRI H. R. GOKHALE: If you look at the clause, it takes into account these things:

> "(b) as to whether a person, found guilty of a corrupt practice at an election to a House of Parliament under any law made by Parliament, shall be disqualified for being chosen as,...."

There are two things. After a person has been proved guilty of corrupt practice, the President says that this corrupt practice is of such a grave

magnitude that the person should not be entitled to be chosen at all. He can do that. The second part is:

> ".. and for being a member of either House of Parliament, or of a House of the Legislature of a State, or as to the period for which he shall be so disqualified,...."

I may give an extreme case only to illustrate the point. Supposing the excess of expenditure is one rupee. Technically that is a corrupt practice, and the courts have *no option* but to declare that the election is void, but taking into account the fact that the so-called corrupt practice is so insignificant, the President may decide that the man should not be disqualified from being chosen as a Member. He will go out so far as the House to which he was elected was concerned.

Take for example Mr. Chawla's case. The House is aware that the excess of expenditure was only Rs. 200 or Rs. 300, but the disqualification automatically followed. Under the existing law, the Election Commission took into account the circumstances and removed the disqualification. But supposing a by-election takes place, then the removal of the disqualification only means that Mr. Chawla is now entitled to be chosen, he can stand for an election, that the disqualification is not so complete that he cannot even be chosen. Therefore, the question of choosing not only comes before the election but also subsequent to an election. That is why the word "chosen" is used.

There is an authority giving the power to decide as a result of enquiry made by the Election Commission about the corrupt practice, and if the corrupt practice is such that there should be a complete ban on the member coming back to the House, of course, on another election... (*Interruptions*) Therefore, I had mentioned that he did not automatically continue to be a Member of the House. The second thing is about the period.

13 hrs.

SHRI PRIYA RANJAN DAS MUNSI: I could not follow.

SHRI H. R. GOKHALE: If the election is set aside; if it is void,—the President does not say that he would regard the election as valid. He is not going to do that—if the court has determined so because the corrupt practice has been proved; the only question is whether his disqualification for being chosen as a Member should attach; if it should attach, then how much it should be. In a given case, the fact may be that there is a very insignificant lapse on the part of a Member. Therefore, it is not completely barring him from fighting another election, and he can come if he gets a chance, that is, if there is a by-election or the next election. It is also possible that his disqualification should be there, but not for too long a period—six years or four years or five years. Here we say it is one year. Even in that one year, he can stand for by-election. I am just giving you an illustration.

The third thing is about the removal or reduction of the period. (*Interruptions*) There is no quarrel at all. I am not quarrelling with you. You are also not quarrelling with me. Since the question has been raised, I think it is better that I should try to explain it. I know that you have not raised this question. But the last part regarding removal or reduction of the period is important. Now this disqualification is attached In a fit case, if made out from a fact that there is a disqualification, but it should be reduced, that power is given. When a disqualification is attached, then comes the question of reduction or removal of the period. There should be either reduction or removal. Now, these are the powers which are given under this section. It is true that it is not the same thing under the law. (*Interruptions*). Let me finish this. You can ask your questions later on. Probably, I am going to answer that also. I remembered it very well.

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Now, there is a provision in the Representation of the Peop'e Act and it may be that in consonance with the constitutional provision, we cannot amend it now because this Constitution has yet to become a law. Till that time, we cannot keep it void. It may be possible that a by-election may take place, disqualification may be attached and the existing provision of the Representation of the People Act may have to be used for such a purpose. But it may be possible that after the Constitution Amendment Bill is passed, finally the President's assent is given. Then the first argument is always there that if there is any statute which is repugnant to the Constitution, it is not the Constitution which is bad but the statute is bad. But we are not going into its legality. It may be that we will have to amend the Representation of the People Act. I do not rule out the possible thing which you have mentioned about the follow-up measures and to remove inconsistency, if there is any, when the time arises: the time is not now. It may be then that we will have to consider that position

Mention was also made about the removal of disqualification etc or the election etc in respect of a corrupt practice That is why this is the first time that this power is being given to the President. Now, what I was saying was that in the existing provision the position was different. For example, the Election Commission had to give advice and the advice was bialing on the President It is so worded The language of the clause is that the decision of the President shall be final and the only obligation is to consult the Election Commission, but after an inquiry made by the Election Commission.

Now, an inquiry is made by the Election Commission for obvious reasons. Firstly, the President cannot be expected to hold an elaborate inquiry, to sift evidence, to record evidence, if necessary. Therefore, it should be left to a body which is composed and constituted under the Constitution. As a result of the inquiry, the Election Commission may come to a certain view, whether a case is made out either for removal or reduction of disqualification or whatever it is. It is on the basis of that view which is really consultation that the President will come to a conclusion as to whether this should be done or not although it is not peremptory or obligatory on the President to act on the advice of the Election Commission

We have corresponding provisions under the Constitution where, for example, although we have to appoint judges in consultation with the Chief Justice of India or in consultation with the Chief Justice of the High Court, nobody has ever contended nor it is possible to contend that consultation means concurrence Here, also, it does not mean concurrence That is quite true. But it does not happen As a matter of practice, I can tell you, as a person who has been dealing with it, invariably, we do not disregard the advice given, after inquiry. Therefore, it is not expected that the President who has not himself held the inquiry, who has not heard the witnesses, etc will interfere arbitrarily in the advice given by the Election Commission I think, you can repose that much confidence in a higher authority or, probably, the highest authority in India I do not think there is any difficulty about it.

AN HON MEMBER: Does the executive come into the picture?

SHRI H R. GOKHALE: Actually, in the case of the appointment of judges, it is really the executive but the executive also does not go against the advice. I do not expect that the executive will do so where an elaborate inquiry is made.

That there might be an arbitrary act, after all, who is to guarantee that the Election Commission also will not act arbitrarily. All these bodies are manned mainly by human beings and there is no guarantee that a judge also does not behave arbitrarily. But we do hope and, I think, it is true that they do not. In most cases, rather than few, we go on the assumption that all functions and duties cast on an authority under the *Constitution* are performed *honestly* by it and in good faith. That is the basis of the present amendment. With all respect to my friend, I do not think any amendment in that is necessary.

श्री विभूति मिश्र : उपाध्यक्ष महोदय, मैं यही कहना चाहता हूं कि यह जो इलैक्शन कमीशन है, यह एग्जीक्यूटिव के कहने से आते हैं और नीचे की सारी बातों को जानते हैं । इसीलिये किसी पार्टी को सन्देह न हो, इसके लिए यह जरूरी है कि इस फैसले को सिटिंग जज वहां पर करे । ऐसा करने मे प्रेजीडैंट को भी सहूलियत रहेगी क्योंकि प्रैजीडेंट बहुत हाई पोस्ट पर रहते है ।

MR. DEPUTY-SPEAKER: That is a different question; that is the constitution of the Election Commission.

श्री विभूति मिश्र : इसीलिये मेरा कहना यह है कि इलैक्शन कमीशन में सुप्रीम कोर्ट या हाई कोर्ट का सिटिंग जज होना चाहिये जिससे लोगों को भी भरोसा हो कि वह ईमानदार हैं और ठीक से अपनी राय देंगे । गोखले जी से मेरा यही निवेदन है ।

MR. DEPUTY-SPEAKER: That does not come in here.

SHRI C. M. STEPHEN: I would like to get answers to two specific questions. The Law Minister said, what is contemplated is with respect to future elections, that is to say, it is not contemplated that in spite of the removal of the disqualification, it is not expected that on the void election, he can come back. If that is so, why should these two words be there, "for being chosen as, and for being,"....

MR. DEPUTY-SPEAKER: .."for being" for the future.

SHRI C. M. STEPHEN: "for being" is a current thing. Once a disqualification goes, it goes without saying that you can contest and come back. The disqualification stands between you and your entitlement to contest an election. Then the disqualification goes and you can contest.

MR. DEPUTY-SPEAKER: 'For being' in the future.

SHRI C. M. STEPHEN: That is not the meaning. It is stated here also.

SHRI H. R. GOKHALE: This is a thing which comes in the earlier Article also. Moreover, there is really no contradiction because it may happen that in respect of corrupt practice, that is not, under the law, only excess expenditure or bribery but there are many things which come under corrupt practices under the Act and some corrupt practices can be proved after a Member comes to 'being' there. Then the question can arise in the court as to whether he should continue or whether he should be chosen or not. In any case, this is something which has been interpreted many times and it is already there in the other provisions of the Article. I don't think there can be any difficulty.

SHRI C. M. STEPHEN: It says 'found guilty of corrupt practice at an election to the Houses of Parliament under any law made by Parliament'. It is not as if some proof is taken or some evidence is taken in other proceedings. And the courts are barred with respect to the vali-

[Shri C. M. Stephen]

dity of the election: it is only on an election petition somewhere and not otherwise. It says 'found guilty of corrupt practice at an election to the Houses of Parliament' and an election to the House of Parliament is out of bounds for a court because under Art. 327 it is clear, as sub-Art.(b) says, that no court shall call in question any election except by an authority fixed up by Parliament. Therefore, it is that alone which is meant. Therefore, if somebody is found guilty of corrupt practice in a trial in an election petition matter, then the question arises as to whether he should be chosen or whether he should be allowed to remain in the House. That is the question. It is not in the future but the present.

MR. DEPUTY-SPEAKER: 'For being' and, after being elected, to be a Member of the House.

SHRI H. R GOKHALE: I thought I had mentioned it, but if you look at the new proposed clause,—you have to read (a) and (b) together [although I earlier read only (b) because I thought the only problem was about corrupt practices]—it says 'as to whether a Member of either House of Parliament has become subject to any of the disqualifications mentioned in Clause 1 of Art. 102'. It is not a corrupt practice; these are disqualifications which are incurred by a Member of Parliament after becoming a Member of Parliament.

SHRI C. M. STEPHEN: It can be a corrupt practice under sub-article (e) of Art. 102. It says 'if so disqualified by or under any law made by Parliament' i.e. if he is disqualified under the Representation of the People Act. This is covered by Art. 102.

SHRI H. R. GOKHALE: I think I have understood my friend very well. The whole point is that a person can incur disqualification after being a Member and then the question arises whether he should be disqualified from being a Member or not. And Art. 102 also has to be taken along with clause (b) where three or four disqualifications are mentioned. Some of these are capable of becoming possible after a person has become a Member. I think there is no difficulty about this.

SHRI C. M. STEPHEN: My main point is this. Section 8(A) of the Representation of the People Act takes care of this; it is practically the same. Why do you think that this Section 8A is not sufficient and that this 8A must become part of the Constitution. This Section says:

> "The case of every person found guilty of a corrupt practice by an order under Section 99 shall be submitted, as soon as may be, after such order takes effect, by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period."

Section 8A of the Representation of People Act provides for that. Why do you want this Clause to come into the Constitution of India? Do you think that this cannot be sustained under the Representation of People Act? If the Representation of People Act can take care of this, why should it become a part of the Constitution of India? Why should the Constitution of India bear an appearance as though, in respect of the person found guilty of corrupt practice, the disqualification must be removed and all that? Why should that become a matter of Constitutional anxiety and solicitude? This Act can take care of it. Why do you think that it must become a part of the Constitution of India?

SHRI H. R. GOKHALE: I have myself said that there is an Act. It may be, after this Amendment comes

into effect, we may have to amend the Act to bring it in line with the Constitution. But we have to keep the Act in force. Until this Constitution Amendment Bill is passed, this will not take effect. And there cannot be a void. Meanwhile, if a by-election is held and some election petition comes, we cannot say that there is no law on this. We will amend the Act after examining it; if there is any inconsistency, we will correct it.

The other point was: why do we want it in the Constitution, why is this law not sufficient? There is only one single answer for that. We are making the decision of the President final The point is, here, the possibility of any judicial or any other authority going into this question is not there. This can be done only by an amendment of the Constitution.

MR. DEPUTY-SPEAKER: Now we take up Clause 21.

Clause 21—(*Amendment of article 105*)

PROF. S. L. SAKSENA: I beg to move:

Page 6, line 31,—

add at the end—

"or be defined by it" (59)

SHRI C. M. STEPHEN: I beg to move:

Page 6, line 30,—

after "from time to time" *insert*—

"be defined by Parliament by law and until so defined shall be such as are in force immediately, before the commencement of section 21 of the Constitution (Forty-fourth Amendment) Act, 1976 and such as may" (114)

SHRI M. C. DAGA: (Pali): I beg to move·

Page 6.—

for lines 28 to 31 *substitute*—

"(3) In other respect the powers, privileges and immunities of each House of Parliament and of the Members and the Committees of each House shall be such as may from time to time be formulated by a Joint Committee of both Houses of Parliament consisting of ten Members of Lok Sabha and five Members of the Rajya Sabha nominated by the Speaker of the House of the People and the Chairman of the Council of States and approved by a joint Session of both Houses of Parliament." (339)

SHRI H. R. GOKHALE: I beg to move:

Page 6, *for* lines 30 and 31, *substitute*—

"of each House shall be those of that House, and of its members and committees, at the commencement of section 21 of the Constitution (Forty-second Amendment) Act, 1976 and as may be evolved by such House of Parliament from time to time."

SHRI INDRAJIT GUPTA: I beg to move:

Page 6, line 30,—

for "evolved' *substitute*—

"laid down by law." (465)

SHRI C. M. STEPHEN: Whatever I had to say, I spoke at the consideration stage, and I am happy that the points made have been taken care of, at least partially.

There is only one point which remains and on which I would like to

[Shri C. M. Stephen]

get an explanation. Under the article, as it is today, the Parliament can pass an Act and spell out the procedure of both the Houses, and the provision is now taken away. Is it because the word 'evolution' will cover an Act of Parliament also? Why should that provision for Act of Parliament be taken away? Could it not be interpreted to mean that hereafter Parliament will not have the power to pass an Act for the purpose of regulating the procedure of this House? This is the only point on which I want to get an explanation.

I am thankful to the Law Minister; the sentiments expressed with respect to this Clause have been taken care of and an amendment has been moved.

SHRI M. C. DAGA: I have moved an amendment. This amendment is very clear on how the powers, privileges and immunities can be decided: there should be a Joint Committee of both the Houses which should go into these and after that, when the Committee comes to a decision, then it may be placed before the Joint Session I have suggested this in my amendment No. 339:

> "In other respects, the powers, privileges and immunities of each House of Parliament and of the Members and the Committees of each House shall be such as may from time to time be formulated by a Joint Committee of both Houses of Parliament consisting of ten Members of Lok Sabha and five Members of the Rajya Sabha nominated by the Speaker of the House of the People and the Chairman of the Council of States and approved by a Joint Session of both Houses of Parliament."

This is my suggestion.

MR. DEPUTY-SPEAKER: Each House is master of its own rules, you do not mix up.

PROF. S. L. SAKSENA: Mr. Deputy-Speaker, Sir, Article 105 reads as under:

> "(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.
>
> (2) In other respects, the powers, privileges and immunities of each House of Parliament and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and its members and committees, at the commencement of the Constitution."

So many years have passed since 1950, when the Constitution came into being, but the powers, privileges, etc. of the Parliament and Members have not yet been defined. Now, by the proposed amendment to this Article, the following is to be substituted for Article 105(3):

> "In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House shall be such as may, from time to time, be evolved by such House of Parliament."

Again, the word 'evolved' is there. I want that the powers, privileges, immunities, etc. should be defined and not left like that. That is, what I want to submit, and I have moved my amendment for that purpose.

SHRI H. R. GOKHALE: Mr. Deputy-Speaker, Sir, by the amendment that I have moved, there is a change in the clause proposed in the Bill. The clause in the Bill is:

> "In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each

House shall be such as may, from time to time, be evolved by such House of Parliament".

We are aware that in the existing provisions, there is a reference to the privileges of the House of Commons and it was thought that after all these years to continue the reference to a foreign legislature in our Constitution was not a very good state of affairs. Therefore, it was first thought that this reference to the House of Commons should go from the Constitution. But then it is also true that there are many situations, where probably we do not have precedents in this House or the other House and where we have to go to precedents elsewhere. And that elsewhere would be the British House of Commons because that is the pattern which we are following. While, therefore, removing the reference to the House of Commons—it was not there in the original proposal—we now say:

> ".....of each House shall be those of that House, and of its members and committees, at the commencement of section 21 of the Constitution (Forty-second Amendment) Act, 1976, and as may be evolved by such House of Parliament from time to time."

We know that, at the moment, the privileges are those which are of the House of Commons. Therefore, in effect, until Parliament devises its own privileges and also of its committees etc., we can still look to May's Parliamentary Practice or the privileges of the House of Commons, because they are the existing privileges. Therefore, the existing privileges are continued without making a reference, which we do not like, to a foreign legislature, but that also is subject to 'as may be evolved by such House of Parliament from time to time'.

Now, it does not mean that we are bound for all times to come by the Privileges of the House of Commons. This House can evolve its own privileges and those will be the privileges of this House, its Committees and its Members.

Now one point and a valid point has been made by Mr. Stephen just now. In fact I had it in mind but he has highlighted it by his amendment and that is that we have not said here or anywhere 'until Parliament, by law, provides'. Therefore, the possibility that Parliament can provide for the privileges whenever the law is made can also be considered and this is one of those clauses to which I referred this morning when you were not here and I said that in response to the views given by the hon. Members I might have to have a second look at some of my amendments and if thought necessary, can bring an amendment to improve the present proposal and all I can say with regard to Mr. Stephen's suggestion is that this is one of those things....

MR. DEPUTY SPEAKER: You are not replying now. You are speaking on your amendment.

SHRI H. R. GOKHALE: My amendment does not include this. Therefore, I am replying to his amendment.

MR. DEPUTY-SPEAKER: That stage will come later because others are yet to speak. I called you to speak on your amendment because you have your amendment.

SHRI H. R. GOKHALE: I am sorry I then withdraw.

So far as my amendment is concerned, I have mentioned the provision and that is the intention of it.

*SHRI S. A. MURUGANANTHAM (Tirunelveli): Mr. Deputy Speaker, Sir, I rise to speak on my amendment No. 465 to clause 21 and also 470 to clause 34 which say that the powers, privileges and immunities of the Members of Parliament shall be laid down by law. ... (*Interruptions*)

SHRI INDRAJIT GUPTA: Mr. Gokhale, the hon. Member is speaking

*The original speech was delivered in Tamil.

[Shri Indrajit Gupta]

in Tamil. I think you better try to follow his arguments.

SHRI H. R. GOKHALE: Sometimes the difficulty is that an hon. Member on the opposite is speaking and some member this side comes and talks to us. People think that I am not listening to the speech but that is not so.

MR. DEPUTY-SPEAKER: This is unparliamentary. Side talk should not have precedence over an hon. Member who has the floor of the House. But I see your difficulty. That happens sometimes.

SHRI S. A. MURUGANANTHAM): Mr. Deputy Speaker, Sir, Amendment No. 465 to Clause 21 moved by our Party Members says that the powers, privileges and immunities of the Members of Parliament shall be laid down by law instead of being 'evolved' by each House of Parliament. It may not be out of place to mention that we have moved a similar Amendment No. 470 to Clause 34 which relates to the Members of the State Legislatures, Clause 21 seeks to amend Article 105(3) of the Constitution. Clause 34 seeks to amend article 194(3) of the Constitution.

Sir, it is really heartening to find, and it has to be welcomed by all in the House, that twenty-eight years after our Independence the unsavoury words like 'the House of Commons of the Parliament of the United Kingdom' are being removed from our Constitution. It is an anachronism that free India's sovereign constitution should have a reference to the House of Commons of the Parliament of the United Kingdom. It was really shameful to be mentioned in the Constitution that the powers, privileges and immunities of the Members of the Lok Sabha and Members of the State Legislatures of free India should be those of the Members of the House of Commons of the Parliament of the United Kingdom. I heartily welcome the removal of these words from our Constitution. I should in fact say that respectability due to our sovereign constitution is being restored and, though belated it is, it should receive the whole-hearted welcome of all of us.

Sir, if a Member is arrested, there is a convention that he should not be handcuffed. In order to make this convention universal, it would be advisable to have such conventions incorporated in a legislation. Similarly, there is the convention that a Member of Parliament would not be arrested within the precincts of the Parliament. It might be all right on one side and on the other it might prove derogatory to democratic conventions. It is criminal to tear the national flag or our Constitution. If a Member resorts to any such anti-national activity within the precincts of the House, he cannot be arrested under this convention, while it would be legal to arrest him forthwith. Such conventions should be incorporated in a law, giving clear-cut clarifications.

Sir, the Jana Sangh Member of Rajya Sabha, Shri Subramania Swamy, in contravention of the laws of the land, is indulging in anti-national activities abroad and without the express permission of the Reserve Bank of India, he has been going to all the countries of the world.

MR. DEPUTY-SPEAKER: Order please. I think I must stop you there. In the first place, you are talking of details of practices and procedures of this House. They do not come here now. Then you are referring to a Member of the other House. That is not desirable. I understand currently that the other House has set up a Committee to go into it. You should not bring it in here. This is outside the purview of this amendment. These are the details of practices and procedures of Parliament. These can be discussed at some other appropriate time, but not now.

SHRI S. A. MURUGANANTHAM: I am only saying that, if a Code of Conduct is formulated for the Members of Parliament, the unconstitutional and illegal activities of the Members of Parliament can be curbed and if necessary their membership of the House can also be revoked.

In the most important and vital discussion that is taking place on the floor of this House, you find that only 30, 35 members are present and participating in the debate. If there is a law stipulating the compulsory presence of Members of Lok Sabha in the discussion of Constitution Amendment Bills, then the presence of more members can easily be ensured in the House. While there is the Members' Salaries and Allowances Act prescribing the financial claims of the Members, I wonder why the immunities and duties of the Members should not be incorporated in a law.

When we are incorporating, through this Constitution Amendment Bill, the duties of the people of India, why should not the duties of the Members of Parliament be incorporated in a law? It would be conducive to effective functioning of the members, if the conventions we have evolved during the past 28 years are incorporated in a law—especially all the conventions relating to the Members of Parliament.

In this background, I hope that the Minister of Law would accept our Amendment which says that the powers, privileges and immunities of the Members of Parliament should be laid down by law.

MR. DEPUTY-SPEAKER: If you want, you may reply.

SHRI H. R. GOKHALE: With regard to the amendment of Shri Stephen, I should not have replied, but I have replied.

With regard to the observations made by my friend, they do not arise on this amendment.

Clause 22 (*Amendment of article 118*),

SHRI JAMBUWANT DHOTE: I beg to move:

Page 6, line 33—

after "quorum" *insert*—

"of one-tenth of the total number of members" (561)

उपाध्यक्ष महोदय, सामाजिक तथा आर्थिक क्रांति की बातें हम ने इस संविधान के 44वें संशोधन में कई बार की हैं और उद्देश्यों में भी इस का उल्लेख हम ने किया है। उपाध्यक्ष महोदय, संविधान का जो 44वां संशोधन है, इस मे आर्थिक और सामाजिक प्रगति मे या क्रान्ति मे जो रोड़े आ सकते हैं, उस के लिए बहुत कम प्रोविजन किया गया है, बल्कि इस संशोधन विधेयक मे बहुत सारा वक्त राजनीतिक और अव्यावहारिक बाते कहने मे गया है। संसदीय प्रजातन्त्र, पार्लियामेटरी डेमोक्रेसी मेरे ख्याल से एक फार्सीकल ड्रामा है। इस पार्लियामेंटरी डेमोक्रेसी मे मैं और मेरी पार्टी कभी विश्वास नही रखती। यह जो फार्सीकल डेमोक्रेसी है यह एक फार्सीकल ड्रामा है। यह फार्स, जो हमें करना है, वह तो अच्छे ढंग से होना चाहिए लेकिन वह फार्स भी अच्छे ढंग से नहीं करना है।

MR. DEPUTY-SPEAKER: Order, order. Why are you participating in it?

SHRI JAMBUWANT DHOTE: To end parliamentary democracy.

MR. DEPUTY-SPEAKER: This is unfortunate.

SHRI B. R. SHUKLA (Bahraich): Every Member has taken an oath of allegiance to the Constitution of India. The hon. Member is speaking which is something derogatory to the dignity of this House. Therefore, he should be asked to withdraw his remarks or the remarks should be expunged from the proceedings.

SHRI D. BASUMATARI: It should not be expunged.

MR. DEPUTY-SPEAKER: Order, order. Have you to say anything on that?

श्री जाबुवंत धोटे : उपाध्यक्ष महोदय, मैं इस संसद् का, इस पार्लियामेंट का अपमान नहीं कर रहा हूं । जो मेरा विचार है और जो मेरे दल के विचार हैं, उन को यहां रखना मैं अपना फर्ज समझता हूं; कर्त्तव्य समझता हूं और मैं समझता हूं कि उन विचारों को यहां रखना इस पार्लियामेंटरी फारम का अपमान नहीं है ।

MR. DEPUTY-SPEAKER: Just a minute.

It is something much deeper, The words should not be used in this way.

Before each Member takes a seat in this House, he has to take an oath. You must have taken that oath.

SHRI JAMBUWANT DHOTE: There is freedom of speech also.

MR. DEPUTY-SPEAKER: I have to give a ruling. I was saying that before each one of us takes his seat in this House, he takes an oath. You have taken that oath. It says:

> 'I, ... having been elected a member of the House of the People do swear in the name of God/Solemnly affirm....'

—whichever way you like—

> '....that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter.'

Therefore, you enter upon your duty here as a Member of Parliament and Parliament is the corner-stone of our Constitution. You have taken that oath. Now, for any Member to say that all this is farce or to say that he is here to end democracy, is most unfortunate. I am requesting you to withdraw those remarks and if you don't do it, I have the only alternative of expunging them from the proceedings of the House and ask you not to repeat this thing.

SHRI JAMBUWANT DHOTE: Article 19 says this:

> 'All citizens shall have the right to freedom of speech and expression'.

I am using it.

MR. DEPUTY-SPEAKER: Please sit down. This freedom is subject to the oath you have taken here, as a Member. I am not talking of what you say outside this House. But here in this House you have taken a certain oath. I would request you to withdraw these remarks because they will go against your own oath and also it is disrespectful to the House. If you don't do it, I will have to expunge these remarks. I give you the choice.

SHRI JAMBUWANT DHOTE: I withdraw my words.

SHRI D. BASUMATARI: Don't be so excited when you speak.

श्री जाबुवंत धोटे : उपाध्यक्ष महोदय, संविधान पर हम बड़ी गहराई से और सोच समझ कर विचार कर रहे हैं । इस 22वें क्लाज के पास हो जाने के बाद तो सदन में कोई चीज ही नहीं रह जायेगा ।

उपाध्यक्ष महोदय, यहां पर जो भी कार्यवाही हमें करनी है, या हम करते हैं, उस कार्यवाही की तरफ सारे देश का ही नहीं, सारे विश्व का ध्यान रहता है । हम इस सदन में काहे का विचार करते हैं, इस सदन में हम क्या करते हैं, इसकी तरफ सब का ध्यान होता है । अगर शासनकर्त्ताओं का यह कहना है कि हम जो भी कानून चाहें, दो-तिहाई मत से मंजूर

करा लेते हैं तो बात अलग है । जब हम डेमोक्रेसी की बात करते हैं, प्रजातंत्र की बात करते हैं तो इस विषय पर हमें बड़ी गंभीरता से विचार करना चाहिए कि देश के मतदाताओं ने, देश के नागरिकों ने संसद् सदस्यों को चुन कर इस सदन में भेजा है और यहां आने वाले विषयों पर विचार करने के लिए भेजा है । संसद सदस्य जो सदन में आते हैं उनका कार्य होता है कि जो सामयिक प्रश्न हैं, जो देश हित के प्रश्न हैं, जो दिक्कतें हैं उन पर बैठ कर गम्भीरता से विचार करें और कुछ निष्कर्ष निकालें । उसी के लिए आपने देखा है कि संविधान में आर्टिकल 100 में जिस वक्त कंस्टिट्युएंट असैम्बली ने यह कांस्टीट्यूशन तैयार किया तो इस पर विचार किया था और कहा था कि संसदीय प्रजातंत्र को हम को चलाना है तो इस जनतंत्र की जन अभिमुख होना चाहिये, इस सदन को जनता के प्रति जिम्मेदार होना चाहिये, जनता को जवाबदार होना चाहिये । इस संविधान मे उस वक्त खास तौर पर सैक्शन 3 और 4 का इस आर्टिकल 100 में उन्होंने प्रावधान किया था । क्लाज 18 के अन्तर्गत आर्टिकल 100 के सैक्शन 3 और 4 अब लोप होने जा रहे हैं । फाउंडिंग फादर्ज आफ दी कांस्टीट्यूशन ने जो इनको शामिल किया था इसका उद्देश्य यह था कि हमारे सदन की गरिमा कायम रहनी चाहिये और उसे कायम रखने के लिए आर्टिकल 100 के सैक्शन 3 और 4 जरूरी हैं । सैक्शन 3 में कहा गया है :

"Until Parliament by law otherwise provides, the quorum to constitute a meeting of either House of Parliament shall be one-tenth of the total of Members of the House."

और सैक्शन 4 में यह है :

"If at any time during a meeting of a House there is no quorum, it shall be the duty of the Chairman or Speaker, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum".

SHRI K. NARAYANA RAO (Bobilli): I rise on a point of order. The scope of this clause is limited. He has taken more time.

MR. DEPUTY-SPEAKER: He is the only person on this. So, I have given him a little more time.

SHRI K. NARAYANA RAO: Relevancy is a casualty!

MR. DEPUTY-SPEAKER: He is speaking on the provision which you want to remove. Let him speak on this.

श्री जाधुवंत धोंडे : अब आप सैक्शन 3 और 4 जो हैं इनका लोप करने जा रहे हैं । उसके ऊपर हमने चर्चा भी की है । जवाब भी जिस ढंग से देना था कानून मंत्री ने दे दिया है । प्रश्न यह है कि फिर चुनाव की क्या जरूरत है? चुन कर लोगों को इस सदन में आने की क्या जरूरत है ? केवल सैंट्रल हाल में बैठने के लिए, केवल टी ए और डी ए लेने के लिए, केवल अपना कारोबार बिजिनेस करने के लिए मतदाता संसद् सदस्यों को अपना प्रतिनिधि बना कर यहां संसद् मे भेजते हैं ?

श्री मूल चंद डागा : सेंट्रल हाल में बैठते हैं तो उन समस्याओं पर गहरा मनन करते हैं जो यहां विचार के लिए आनी होती हैं ।

श्री जाधुवंत धोंडे : तब बैड रूम में करने जाओ ।

श्री डी० वसुमतारी : जो बायकाट करके गए हैं उनको आप कुछ क्यों नहीं कहते हैं?

श्री जाधुवंत धोंडे : आप और मैं दोनों बैड रूम में विचार करेंगे । इसके बाद

[श्री जाबुवंत घोटे]

यही होगा । बैड रूम में चर्चा होगी और यहां रेजोल्यूशन आ जाएगा । चैम्बर में चर्चा होगी और यहां विधेयक आ जाएगा और बिना कोरम के यह सब चीज चलेगी ।

उपाध्यक्ष महोदय, प्रश्न यह है कि जिसके लिये संसद् सदस्यों को मतदाताओं ने यहां चुन कर भेजा है उस काम की पूर्ति के लिये और कोरम रखने के लिये संसद के कार्य के लिये एक नही बल्कि, दो दो संसद् कार्य मंत्री और उपमंत्री हैं । क्या इनकी यह ड्यूटी नहीं है कि कोरम सदन में बनाये रखें । यह लोग घूमने में, सेन्ट्रल हाल जाने में लगे रहते हैं । हम सब संसदीय प्रजातंत्र के पक्षपाती है और एडवोकेट श्री शुक्ला ने कहा हैं कि इनका अपमान हो रहा है और आपने भी रूलिंग दी हैं । तो कम से कम उसकी इज्जत रखने के लिये तो कोरम रखना जरूरी है । अन्यथा इतने बडे सदन की क्या जरूरत है ? मैं जानता हूं कि पार्लियामेंटरी डेमोक्रेसी विलम्बकारी संस्था हैं जिसमें फैसले लेने में बडा विलम्ब लगता है । तो फिर क्या जरूरत हैं कि यहां 550 और 700 सदस्य बैठें । यदि कोरम हटाना ही है तो एक मिनी हाउस तैयार कीजिये और देश से सम्बन्धित सारा कार्य पहले सम्बन्धित मंत्री की चैम्बर में बैठ कर तय कर लीजिये और बाद मे सदन में ले आइये और पास करा लीजिये । विलम्बकारी संसदीय प्रणाली को अमल में लाने के लिए बडी दिक्कत आती है । और आप इस कार्य के लिये कोरम नही रख सकते तो फिर इस प्रणाली को हटा दीजिये । लेकिन जब तक यह प्रणाली कायम है तब तक कोरम रखना आवश्यक हैं ।]

आर्टिकल 118 (1) में मेरा संशोधन इस प्रकार है कि "गणपूर्ति" से पूर्व निम्नलिखित अन्तःस्थापित किया जाये :

"सदस्यों की कुल संख्या के दशांश की" ।

अगर कोरम नहीं रखा जाएगा तो फिर यहां किसी सदस्य के बैठने की जरूरत ही नहीं होगी । केवल स्पीकर साहब या माननीय स्टीफन जैसे सदस्य ही रहेंगे जो चेयर पर जा कर स्टिफ हो जाते हैं । लेकिन माननीय स्टीफन के अलावा और भी बहुत से लोग इस देश में स्टिफ हैं; मैं भी माननीय स्टीफन से अधिक स्टिफ हूं । इसलिये क्लाज 22 में जो कोरम हटाने का प्रावधान किया गया हैं उस पर मेरा विरोध है । अगर पार्लियामेंटरी डेमोक्रेसी को रखना है जिस पर आप का और माननीय स्टीफन का विश्वास है तो मेरा यह संशोधन उसके लिये आवश्यक है ।

SHRI K. NARAYANA RAO: On a point of order. He is casting reflections on the Chair.

MR. DEPUTY-SPEAKER: He has withdrawn his remarks.

SHRI H. R. GOKHALE: The reply is very simple. The discussion on article 100 has already been finished. If under 100 clauses (3) and (4) are to go away, then to say that in art. 118 there should be no provision for procedure for quorum would really mean that there is no quorum provided in the Constitution, not even under the rules. Everybody agrees that there must be some quorum. As to what it should be is to be decided after this clause is amended. Parliament will decide it. Therefore, what he argues by asking for amendment of art. 118 really goes against his own argument. It is absolutely necessary that the amendment proposed to article 118 should be carried out.

MR. DEPUTY-SPEAKER: We shall now take up the next clause. Before I go to the next clause, the Minister of Parliamentary Affairs wants to make some announcement.

12.50 hrs.

BUSINESS OF THE HOUSE—*contd.*

THE MINISTER OF WORKS AND HOUSING AND PARLIAMENTARY AFFAIRS (SHRI K. RAGHU RAMAIAH): This morning when I announced the business for the next week, some hon. Members suggested something and I said then that after the Business Advisory Committee meeting was over, I would announce the period of extension of the current sitting of the Lok Sabha. We are now scheduled to sit upto 3rd November. According to what has been decided in the Business Advisory Committee, there will be sitting of the Lok Sabha also on Thursday the 4th and Friday the 5th November.

CONSTITUTION (FORTY-FOURTH AMENDMENT) BILL—*Contd.*

New clause 22A

MR. DEPUTY-SPEAKER: Do you want to move your amendment?

SHRI K. NARAYANA RAO: No.

श्री जांबुवंत धोटे : उपाध्यक्ष महोदय मेरा जो प्वाइंट है इसे प्रेस करने के लिये मैं प्वाइन्ट आफ आर्डर रेज करना चाहता हूं ।

उपाध्यक्ष महोदय : क्या प्वाइन्ट आफ आर्डर है ?

श्री जांबुवंत धोटे : आर्टिकल 100 का सैक्शन 3 और 4 अभी कायम हैं औरउसके अन्तर्गत सदन में कोरम 1/10 होना चाहिये । आज सदन में कबि हम कांस्टीट्यूशन पर गम्भीरता से विचार कर रहे है क्लाज-बाई-क्लाज डिस्कशन चल रहा है तो उतनी ही गम्भीरता से सब सदस्यों को सदन में बैठना चाहिये, कोरम का होना जरूरी हैं । जब यह आर्टिकल नहीं होगा, उस वक्त कोरम रहे या न रहे वह बात दूसरी है । इस समय सदन में कोरम नहीं है ।

MR. DEPUTY-SPEAKER: Your point of order is that there is no quorum in the House at the moment. I shall check it up. In the meanwhile let us carry on with business. We were on clause 23.... (*Interruptions*) You have raised this point; I have to find out; the Marshal is here and it is his duty to count whether there is quorum or not.

SHRI JAMBUWANT DHOTE: Where is the Minister of Parliamentary Affairs? Where is the Deputy Minister?

MR. DEPUTY-SPEAKER: Whenever anybody challenges the quorum, it is my duty to check up and it is being checked up. After the figures are out, I will give my ruling. There are amendment to clause 23.

Clause 23— Insertion of new article 131A. (*Exclusive jurisdiction of the Supreme Court in regard to questions as to validity of laws*)

SHRI B. R. SHUKLA: I beg to move:

Page 6, line 45,—

After "State laws" *insert*,—

"or any rule, notification or bye-law made by any State Legislature or authority in pursuance of any Central Law" (60)

Page 6,—

after line 40, *insert*—

"(1A) The Supreme Court shall have jurisdiction to issue writs, in addition to writs under article 32, similar to that of High Court under article 226, in all matters where there has been a contravention of any Central law or a Central and State law both or any rules, regulations, by-laws or notification made thereunder.

[Shri B. R. Shukla]

(1B) The power, procedure and issue of interim stay order by the Supreme Court in the matters mentioned in clause 1A shall be analogous to those contained in article 226 as amended by the Constitution (Forty-fourth Amendment) Act, 1976."

Page 7,—

after line 25, *insert*—

"(6) The law declared by Supreme Court shall be binding so long as it is not repealed or altered by appropriate legislature of competent jurisdiction." (88)

SHRI C. M. STEPHEN: I beg to move:

Page 6, line 38,—

after "this Constitution" *insert*—

"but subject to clause (4) of article 368" (115)

Page 7, line 17,—

(i) *omit* "the High Court shall stay"

(ii) *after* "in respect of the case" *insert* "shall stand stayed" (116)

SHRI MD. JAMILURRAHMAN (Kishanganj): I beg to move:

Page 6,—

after line 40, *insert*—

"(1A) The Supreme Court shall have jurisdiction to issue writs under article 32 similar to that of High Court under article 226 in all matters including the rights guaranteed by the Constitution to the religious minorities and in all matters where there has been a contravention of any Central law or a Central or State law or both or any rules, regulations, by-laws or notifications made thereunder.

(1B) The powers, procedure and issue of interim stay order by the Supreme Court in the matters mentioned in clause (1A) shall be analogous to those contained in article 226 as amended by the Constitution (Forty-fourth Amendment) Act, 1976". (301)

श्री जावुदंत बोडे : उपाध्यक्ष महोदय, चैक करने में इतनी देर नहीं लगती ।

MR. DEPUTY-SPEAKER: Now, the report is that there is no quorum. Let the Bell be rung—Now there is quorum.

SHRI D. K. PANDA (Bhaujanagar): I beg to move:

Page 6,—

after line 40, *insert*—

"Provided that a High Court shall have jurisdiction to determine questions relating to the constitutional validity of any Central law which seeks to give effect to the provisions of Part IV of the Constitution." (574)

SHRI PRIYA RANJAN DAS MUNSI: I beg to move:

Page 7,—

omit lines 5 to 15 (583)

SHRI B. R. SHUKLA: Mr. Deputy-Speaker, Sir, under the present Amendment Bill, the jurisdiction of the High Court is confined to the determination of the validity of the State Law or the rules and notification made thereunder. But as the Supreme Court will be exclusively competent to determine the validity of a central law, now there are laws in this country which are passed by the Parliament. But under the rule making power of the Central Law, the State Governments and the State Legislatures sometime frame rules. For example, we have got Essential Commodities Act. The State Governments have been authorised to make orders, orders like prevention of profiteering and hoarding, price fixation of the essential commodities

regulation of licences, etc. The question will then arise whether these various rules which are framed in pursuance of the Central law would be designated as State laws or Central laws, and whether the forum would be exclusively of the Supreme Court or that of the High Court. Therefore, my amendment is to this effect that the Supreme Court shall have the jurisdiction to determine the validity of the Central law as well as any rule, notification or bye-laws made by any State Legislature or authority in pursuance of any Central law. Then, Sir, it is also provided that the writ jurisdiction of the High Court will extend to the enforcement of the fundamental rights guaranteed under the Constitution. Besides this, whenever there is any contravention of any law which has resulted in substantial injustice to any citizen, he will have the right to move the High Court for the en- of exercise of jurisdiction by the forcement or redressal of his right the time being concerned with Article 226A but for elaborating my arguments, I am referring to that. Article 226A in its own terms, provides that the High Court's jurisdiction under Article 226 will not extend to the determination of the validity of the Central law. Now the jurisdiction of the Supreme Court is exercisable in three ways, namely, the original jurisdiction of the Supreme Court under Article 32 but that is confined to the enforcement of the Fundamental Rights. The scope of Article 226 as it stands today, is sought to be amended under the present Bill which extends to a larger area than the jurisdiction under Article 32. Then the second type of jurisdiction exercisable by the Supreme Court is appellate jurisdiction. The third type of jurisdiction is advisory jurisdiction. My submission is, when there is violation of any Central law, in what way the Supreme Court shall be moved? Certainly, it cannot be moved in its original jurisdiction because the question does not involve the fundamental rights. The High Court also cannot be moved because it will not have the power to go into the question of the Central law. Thirdly, advisory jurisdiction is out of picture. Therefore, my submission is that suitable amendment should be made that just in the case of exercise of jurisdiction by the High Court under Article 226, the Supreme Court shall have jurisdiction to issue writs, in addition to writs under Article 32, in all matters where there has been a contravention of any Central law or Central and State law both or any rules, regulations, bye-laws or notification made thereunder. 14

14.00 hrs.

My third amendment is very simple. Under the present Constitution, the law declared by Supreme Court shall be binding on all inferior courts and tribunals. Sometimes, misgivings in interpretations arise. Therefore, my amendment is that the law declared by the Supreme Court shall be binding till it is altered or modified by an appropriate act of Parliament or State Legislature.

SHRI D. K. PANDA (Bhanjanagar): Mr. Deputy-Speaker, Sir, amendment number to clause 23 is 574, which reads like this:

> "Provided that a High Court shall have jurisdiction to determine questions relating to the constitutional validity of any Central law which seeks to give effect to the provisions of Part IV of the Constitution."

The whole crux of my contention is that if you give the Supreme Court exclusive jurisdiction for determining the constitutional validity of any Central law, what will be the position? The position will be that a large number of weaker sections of the society will be deprived of their right to take the matter, where they are affected by any Central law, to the High Court. Here this means deprivation of justice to the rural sections of the people who cannot afford or who cannot have the means

[Shri D. K. Panda]

directly to go to the Supreme Court. Secondly, in regard to the transfer of powers, it is mentioned subsequently as follows:

"(2) Where a High Court is satisfied—

(a) that a case pending before it or before a court subordinate to it involves questions as to the constitutional validity of any Central law or, as the case may be, of both Central and State laws;...."

So, when the Supreme Court or the High Court finds that any question of constitutional validity is involved in a Central law, it can, of its own accord, examine it.

Then, the Attorney-General can also, on application, call for any such case pending before a High Court. Thirdly, the Supreme Court also can call for the records of the High Court if any case is pending before the latter. Now, the question here is that when all the powers are there, when the Supreme Court can call for any case involving the constitutional validity of a Central law, why should the High Court be deprived of the jurisdiction to entertain any such question as to the validity of a Central law? Therefore I have given this amendment.

But this amendment has a direction. My amendment is distinguishable from the other amendments in this respect. Suppose there is a Central Act. In order to challenge it, any money-bag or any rich, landed and propertied man used to take any case to the Supreme Court or High Court. So, in the name of constitutional validity, so many progressive legislations also have been held up. As a result, the poor people could not get the benefit for long. In West Bengal, more than 46,000 cases were pending. My amendment is in regard to the direction, not only to the other courts, but also to the High Courts; the High Court or the Supreme Court would have to decide a matter quite in conformity with the Directive Principles. It means that in order to ensure the implementation of the Directive Principles, the High Court or the Supreme Court can take up a matter, where the constitutional validity is challenged. Take for example, the Bihar Tenancy Act. It gives some relief and some rights to the tenants. And amendment was moved by the Bihar government, to take away some of the rights of the tenants. We find that that amendment goes against the policy in regard to land reform, declared by the government, the Land Reform Act and against the spirit of the 20-Point Economic Programme. Take the case also of bonded labour. Suppose there is a Central Act; and suppose an amendment has been brought to negate whatever is progressive there. Under such circumstances, why should not the High Court interfere? I am not in favour of giving absolute jurisdiction and absolute power to the High Court or the Supreme Court. But here we say that if, in matters where an ordinary man, the poor people, government employees or others can get some benefit under the 20-Point Programme there is a Central Act containing things which go against the Directive Principles, then such things should be taken up by the High Court.

Where it is a question of ensuring the implementation of the directive principles, the High Court may be given jurisdiction, as this will also save much of the time of the Supreme Court. If everything is brought to the Supreme Court, it will be loaded with more and more work. Therefore, the High Court may be allowed to decide matters involving constitutional validity relating to Central laws where they concern the implementation of the directive principles.

I hope the hon. Minister will accept my amendment.

SHRI C. M. STEPHEN (Muyattupuzha): When Amendment No. 6

was being discussed, the hon. Minister said that the point that I raised could be considered when we came to clause 23.

In the first place, the proposed Article 131A is not absolutely necessary because the Supreme Court even now has got jurisdiction with reference to all Central laws and the jurisdiction of the High Courts is excluded by the proposed Article 228A which says:

> "No High Court shall have jurisdiction to declare any Central law to be constitutionally invalid."

So, it is only a reiteration of the present position. If it is necesseary, let it remain. However, the wording is:

> "Notwithstanding anything contained in any other provision of this Constitution".

That would cover Article 368 also, and hence the amendments passed under Article 368 can come within the purview of the Supreme Court. So, by way of abundant caution, I want to add in the above, after words "this Constitution", the following:

> "but subject to clause (4) of Article 368".

As I said, the whole exercise is to safeguard the Constitutional Amendment law which we pass. So, I hope the hon. Minister would consider it.

The subordinate courts may be grappling with original suits where the validity of a Central law may also come in. That may be the tail end of the whole case. Merely because that has to be determined by the Supreme Court, why should the whole proceedings be stayed? Why should it be compulsory for the High Court to stay the case? If this can be bifurcated for the purpose of speedy disposal of the case, is it not better that we leave the matter open for the Supreme Court to consider whether in the circumstances of the case it should be stayed or not. If somebody puts in an argument attacking a Central law and the High Court decides that the determination of the matter is necessary for the disposal of the case, why should the original suit, the entire trial, the entire evidence collected remain stayed until the Supreme Court finds time to dispose of the matter? It could as well be for the Supreme Court to dispose of the matter. In the meanwhile, the trial part of the case could be over; by that time, the question of law will have been answered and gone to the subordinate court and they will be able to dispose of the case quickly. This is a matter which may be considered by the Law Minister.

When you speak about the stay matter, my suggestion is that you leave it to the Supreme Court. The Supreme Court in its discretion may stay or may not stay, may stay a part of it or may not stay a part of it. This discretion may be left to the Supreme Court rather than to be made mandatory on the High Court.

Then, the right to move the Supreme Court is now confined to the Attorney-General. There may be parties intereseted in that. If the parties are interested and go to the High Court and satisfy the High Court, the High Court can send it up. Why not give the same right to the parties to move the Supreme Court? It is not a matter of public importance. It is a matter in which the parties are also interested. Therefore, let it not be confined to the Attorney-General to move the Supreme Court. The question is one of satisfaction of the Supreme Court. Strictly speaking, now it is compulsory for the High Court to refer the matter. The Supreme Court need not come into the picture. It says: "The High Court shall refer the question". My suggestion is that any party can go to the High Court and ask for it.

[Shri C. M. Stephen]

My contention is that it must be only applicable to the next clause because the next clause deals with cases pending in courts in different States. There the Attorney-General comes into the picture. Here, in this clause, I suggest, let anybody move the High Court. If the High Court does not do it, let somebody go in appeal. There is no rationale why a parallel jurisdiction be maintained. Once the court is seized of the matter, it must be for that court to decide as to what should happen with respect to the future of the case that is pending there. The entire matter may be given a second-thought by the Law Minister.

Therefore, the points that I have raised are the following Firstly Articl 131 be amended to cover the case of a Central law under Article 368, Secondly, with respect to stay, let it not be compulsory in the interest of the expeditious disposal of the case. Otherwise, this will become a factor to hamper the disposal of the case. Leave it to the Supreme Court to decide whether the matter must be stayed or not. Thirdly, the Attorney-General alone need not come into the picture. Fourthly, the entire provision with respect to the Supreme Court coming into the picture and calling the case is unnecessary in the light of the compulsory provision that you have put in that the High Court shall refer the case to the Supreme Court. The parallel jurisdiction is not necessary.

MR. DEPUTY-SPEAKER: Shri Jamilurrahman.

SHRI MD JAMILURRAHMAN: I may be allowed to withdraw my amendment though I have moved it.

MR. DEPUTY-SPEAKER: You may not press for it. At the moment, there is no question of withdrawal.

SHRI MD. JAMILURRAHMAN: I am not pressing.

MR. DEPUTY-SPEAKER: That will come up on Monday only.

SHRI PRIYA RANJAN DAS MUNSI: First of all, during the general discussion I made it absolutely clear that the provision to give absolute jurisdiction to the Supreme Court in regard to all Central laws is not a healthy thing in a Parliamentary democratic system like that of ours. But as I have spoken about this in the general discussion, I will come now to my specific amendment. Take, for example, the High Courts as they are in the country. It is not only on the issue of Art. 226 that the question of its use and misuse comes in. As I said during the discussion also, somehow or other a feeling is there that the judiciary has collectively developed a concept which I interpreted as class struggle. The judiciary represents one class and the Parliament represents one class. That being so, it would not be wise on our part to think that every judiciary that may come in the future and the one that is functioning now will remain as it is today. It may happend that the judiciary, to serve the people of the country and, out of their own experience, may interpret the Constitution from their own angle, not to satisfy the Parliament but to satisfy the people. It is unwise on our part to have a completely distorted view, if not of their widom, of their capacity and competence.

The Law Minister advanced the argument during the general dicussion that ultimately all matters in connection with Central laws come to the Supreme Court and therefore, instead of keeping them with the High Court they may be put under the Supreme Court's jurisdiction exclusively. The hon. Minister was himself a learned Judge and I need not tell him that in matters relating to civil suit or in criminal and Constitutional matters, judicial reviews and judicial decisions cannot be restricted to a parficular

platform. It must come from below and go too the top. For example, in our Parliamentary system we know that under the Constituion the final assent has to be given by the President, though Parliament is supreme. It is a formality. Whatever we decide, the President will have to give his assent to it; that is the process. So, in regard to the judiciary also, there should be such a procedure. If you think that the High Court is incompetent or that it is creating more obstacles by its interpretation of Central laws, how can you differentiate between the collective wisdom of the High Court from that of the Supreme Court? In that case, the Supreme Court cannot claim extra competence.

If your argument is that it is creating delay I would humbly submit that if in all matters relating to Central law you want to give immediate relief to the people or citizens of the country or even to political groups or Parties or even to State Governments and the Supreme Court, get extra jurisdiction thereby, don't you think the Supreme Court will be overcrowded and it will find it difficult to give relief in the manner Government thinks it can?

Thirdly, if it is a question of democratisation, I would submit that, though Parliament is supreme (and I am one of those who strongly feel that Parliament must be supreme in all matters) the judiciary should be given enough scope or opportunity by an arrangement through which they can learn how to move with the people and do things better.

Now, take for example the West Bengal State where Preseident's Rule was imposed and the Assembly was dissolved. It is usual and it is part of the Constitution that after Ordinances by the President, laws should be made by Parliament which will apply to the State and the Central Government decides the interests of such States—whether Assam or Sikkim or Orissa—and even if the State Government feels that something has to be done, under the political system in which we are operating, they can't do it if power is with the Centre. But if a citizen wants to get an immediate interpretation of something, why do you debar the High Court from giving that interpretation? After the High Court has given its interpretation the Supreme Court can give its own interpretation and make the process much more democratic. But setting the line there is no good for the health of the democracy or for the concept of democratisation of the judiciary. I am not pressing the amendment that the entire provision be deleted. I partially meet it. I have made it absolutely clear that the High Court shall refer the questions for the decision of the Supreme Court. But the point is this. By accepting the partial wisdom of the High Court, you are creating a problem which nobody understands. First you say that the High Court shall refer the questions for the decision of the Supreme Court, and again you say:

> "Without prejudice to the provisions of clause (2), where, on an application made by the Attorney-General of India, the Supreme Court is satisfied..."

And who is the Attorney-General of India? The Attorney-General of India will make a submission to the Supreme Court to withdraw a matter from a High Court only to defend the interests of the Central Government. Those who are not in the official patronage of a ruling political party may feel that it is not correct. For example, suppose in future the country is run or manoeuvred by some group who are anti-people and the pro-people forces remain outside the Parliament and certain laws are made by those anti-people forces describing them as Central laws, then why should I not have the right, as a citizen of this country, to go to the

[Shri Priya Ranjan Das Munsi.]

Supreme Court without the help of the Attorney-General and also to the High Court? You are telling the High Court: 'I am giving you a lollipop or a biscuit; you eat or do not eat; I do not worry'. This is not at all a good thing to do. You may straightway say that you will not give any power to the High Court. I do not mind that. Why should you give the High Court some right to refer to the Supreme Court and at the same time also say that, without prejudice to the provisions of clause (2), the Attorney-General may make an application to the Supreme Court to withdraw it from the High Court? This is a double-faced concept of judiciary which no experts on international jurisprudence will appreciate. It is against the basic concept of democracy also. Therefore, I appeal that you may keep the provision up to that stage, namely, that the High Court shall refer the questions for the decision of the Supreme Court and delete the provision:

> "Without prejudice to the provisions of clause (2) where, on an application made by the Attorney-General of India, the Supreme Court is satisfied,—
>
> (a) that a case pending before a High Court or before a court subordinate to a High Court involves questions as to the constitutional validity of any Central law or, as the case may be, both Central and State laws;" . . .

Both Central and State laws! It will disrupt our integrity in future. Take, for example, that the State Government of Orissa or West Bengal or Assam decides that some arrangement must be made within their State for the benefit of the people of that State, keeping in view the national character of the country also; if the Central Government is being run or dominated by some other Party, and if they feel that this law may, in elections, in politics, go adversely against them, they may ask the Attorney-General to withdraw it. So, it is wrong. It will create more confusion about the integrity of the country about the Centre-State relations. It will encourage and provoke the chauvinistic, provincial and regional forces, who want to give a call for secession, separation of the State, division of the State, and so on. These are my only submissions.

SHRI H. R. GOKHALE: With to the amendments which have been moved, I am not inclined to accept any of them. But that does not mean that no change is necessary. This is one of the Clauses to which I was referring. It may be that some amendment is necessary and I will bring it. But I am not inclined to accept these amendments.

SHRI PRIYA RANJAN DAS MUNSI: For one-party rule it is all right. Will you please explain, keeping the federal structure and also Parliamentary democracy in view, whether this provision will satisfy the aspirations of the people?

SHRI H. R. GOKHALE: I have not replied. The first thing which was argued, not by him by some othtr hon. Member, was this: there is article 32. But an application to the Supreme Court for challenging a Central law cannot be made under that article because that article deals with the issue of writs and for enforcement of fundamental rights. It is true that Article 32 will not apply. But what is lost sight of is that Article 131 which is now sought to be introduced will itself create jurisdiction in the Supreme Court. That is why, it says:

> "Notwithstanding anything contained in any other provision of this Constitution, the Supreme Court shall, to the exclusion of any

other court, have jurisdiction to determine all questions relating to the constitutional validity of any Central law"

Therefore, jurisdiction is conferred expressly by this clause on the Supreme Court to determine the constitutional validity of a Central law, but to fortify this, another clause is there which will come later for consideration and that is clause 26. Therefore, the power is given to the Supreme Court to make rules, to lay down the manner or to prescribe the procedure which is to be followed when an application has been made for challenging a Central law arising under this particular clause, that is Article 131A. The fear that since there is no provision enabling a person to make an application is, to my mind without any substance.

Then, it was said that some provision should be made with regard to the jurisdiction of the Supreme Court because, as Shri Shukla argued, there is the jurisdiction, which is called appellate jurisdiction, which is called special jurisdiction, original jurisdiction and advisory jurisdiction and so on. That is quite true. That is precisely, why under this Article, we created a specific and exclusive jurisdiction. Therefore, the jurisdiction is confirmed, you do not have to go to Article 32 and anything else for this purpose.

There is some point in the other thing that was said. On the one hand, it was suggested that it should be made clear that the constitutional validity of the rules, regulations, bye-laws etc. under the Central laws should only be decided by the Supreme Court. Another view is that it is burdening the Supreme Court too much, let the main legislation be questioned before the Supreme Court, and the rules, regulations, bye-laws etc. be looked into by the High Courts. There is something to be said in favour and against both these points and I am keeping this open. It is one of the points which I am examining.

With regard to the proposal that the High Courts should continue to have powers in respect of some matters, I want to make it clear that these provisions are not because of any distrust in the High Courts. Shri Munsi said: Why do you distrust the High Courts in this country? The basis for the provision is not any distrust in the High Court or the Supreme Court judges. Maybe that we have said certain things with regard to the power to look into the validity of constitutional amendments, and there also, there was no distrust expressed in the Supreme Court. We have also indicated what are the spheres in which the Parliament and the Supreme Court function, but there was nothing said, nor was it intended to be said, that all these amendments with regard to judiciary proceeded on a basic distrust in the judiciary. Certainly myself and all on this side do not have any distrust in the courts. I want to make that clear. The whole idea behind these provisions and some other provisions, which will follow, is to so organize the functioning of the courts, to distribute the jurisdiction of the courts in such a manner that not only the procedure, but substantive exercise of the jurisdiction is regulated both in the interest of administration of justice and also in the interest of greater expeditions as also saving of costs and expenses. That is the basic purpose. There is no point in saying that the High Courts cannot do justice to this matter, and, therefore, we are asking the Supreme Court to do this. If the matters are left to the High Courts, the High Courts can be trusted. If it is a question of not having any trust, why should we leave the State laws with them? The whole idea was that a central law is the law which affects the whole country. If it is set aside, it affects the whole country and if it is upheld it benefits the whole country. And, therefore, we should have one and only one authoritative final pronouncement and that can only be

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from the Supreme Court. We have seen in our experience that when central laws are challenged before the High Courts, and often they are challenged, we have faced situations where one High Court says that the central law is valid and the other High Court says, it is not valid. We do not know what to do in such cases. Then, of course, we have to go to the Supreme Court against the judgement which says that it is not valid and until the Supreme Court finally decides, we wait for giving effect to that law. It is to get out from this difficulty and possible delay in the implementation of the laws and so that there are no conflicting decisions on a central law which is applicable to the whole country that the intention was that the central law should go to the Supreme Court. But this does not apply to the State laws State laws apply only to the States and even if a State law is struck down by the High Court, let us say, then an appeal is provided under Art. 136 and that is not touched. May be there are similar laws in various States. Therefore, if one part of a State law is struck down it cannot directly affect the other law because the other law is not struck down, but it may have some effect. Then questions will arise if a similar provision is struck down by one High Court, what is the position with regard to the operation of similar laws of other States? Ultimately, the power to go to the Supreme Court under Article 136 is there. The whole idea in keeping this is to have one final pronouncement on the validity of laws.

Then it was said, why have you brought in the Attorney General? The reason is this. First of all there is an express provision that it is an obligation and a mandatory duty of the High Courts that when any question comes up before the High Court, the High Court has to consider whether any question as to the constitutional validity of a central law arises in that case. If it does not arise, then there is no question and the High Court can decide it. On the other hand, if they find that there is some question of constitutional validity of a central law and along with it the validity of the State law is also involved then the High Court can say, "We cannot decide this. The Supreme Court will decide both". Thirdly, the High Court may come to the conclusion that the validity of the law is used merely as an academic argument and that even if it is held that the law is invalid, the facts of that particular case do not depend on the validity or invalidity of a particular law and, therefore, the case can be disposed of without determining the validity of that law The High Court can say on an academic argument 'We would not decide that the Act is invalid'. For example, in the general Requisition Act for requisition of property, usually even without going into the validity of the Central law, the order of the government can be struck down on other grounds. Then the High Court may say, 'Why should we look into the validity? We are giving you the relief you are asking. Why should such a case be sent to the Supreme Court?' The High Court can say, 'We can decide this case without going into the validity of the law'. These are various alternatives for consideration of the provision.

Clause 3 where the Attorney General is brought in has two aspects. One is: suppose in some case not exactly the special leave to appeal the High Court has taken a decision that according to the High Court, the decision is taken in good faith in respect of a central law and it is not necessary to refer the question to the Supreme Court. The Attorney General as the highest law officer and a constitutional authority is a person who should be entrusted with the duty of moving the Supreme Court and pointing out to the Supreme Court that this mistake or grave error has happened, 'You look into this and call

for the record of the case.' And I am quite sure that whenever anything like this is done, no court will do it without hearing the other side. That is the elementary principle which is followed in all these cases. Therefore, the power given to the Attorney General here is only in addition to the power and supplemental to the already existing obligation on the High Court to refer such cases to the Supreme Court. I think in 99 out of 100 cases the Attorney General will not have to do this.

Then the other provisions of the clause were not very much commented upon. Broadly these are the questions which were referred to. One thing I might mention with regard to the point raised by Mr. Stephen. Although I am not accepting his amendments, there may be something to consider whether by way of a proper amendment, something is necessary to be done in that direction. That I am considering and I may bring it before the House.

SHRI PRIYA RANJAN DAS MUNSI (Calcutta-South): The Law Minister stated about the Central Law. But it has been clearly mentioned here:

> "that a case pending before a High Court or before a court subordinate to a High Court involves questions as to the constitutional validity of any Central law or, as the case may be, of both Central and State laws; and"

It is clearly mentioned that the State laws can be withdrawn by the Attorney General and he can suspend the functioning.

SHRI H. R. GOKHALE: The occasion arises when the determination of a validity of the State Law also affects the validity of similar laws in other States.

The Supreme Court does not know what is happening in the States. Somebody must bring that to their notice. As I said earlier, these questions will be very very rare. I do not expect that this will happen. But it should not be that we have not provided for the remedy.

My friend Shri Stephen also referred with regard to the Attorney General. I have already given my reply.

Clause 24- (*Insertion of new Article 139A. Transfer of certain cases.*)

MR. DEPUTY SPEAKER: Shri N. Sreekantan Nair is not there.

SHRI PRIYA RANJAN DAS MUNSI: I beg to move:

> Page 7, line 29,
>
> *after* "India" *insert* "or any citizen of India" (584).

This is again with regard to the Attorney General. I do not know the views expressed by the eminent jurists or the persons interviewed by the Swaran Singh Committee or the private discussion they had with the Law Minister himself. I would like to ask the Law Minister as to why does he want to restrict it only to the Attorney General of India and why does he not want to allow all the citizens of the country? Apart from the Attorney General of India, why does he not add—"any citizen of India"? This is my amendment.

SHRI H. R. GOKHALE: We have not lost sight of it. We considered it. If we allow "any citizen of India" there will be a number of applications every week in the Supreme Court. Suppose there is a litigation against me in Kerala and I want to delay the proceedings, then all that I have to do is to go to the Supreme Court and say that a similar application is pending in the Bombay High Court. The case cannot be decided until the facts are obtained from the Bombay High Court or the case at Bombay is heard. Various applications will have to remain pending. As against this the Attorney General has no interest in individual

[Shri H. R. Gokhale]

cases. He is a Constitutional authority. He is not interested in either party. Here the highest officer of the State has to apply his mind to find out whether there are similar points of law and that too of substantial public importance and if conflicts are likely to arise on account of cases pending in different courts, then alone the Attorney General will make an application.

SHRI PRIYA RANJAN DAS MUNSI If a citizen or a political party or group feels about the Central Law which adversely affects, him, then what is the relief if the Attorney General is not interested.

SHRI H. R GOKHALE· My friend is mixing up the two questions. The Article to which we are referring says

> "After the application made by the Attorney General, the Supreme Court is satisfied that cases involved are the same or substantially the same questions of law".

It does not refer to the Constitutional validity

The law is pending before the high court or two or more high courts which involves substantial questions of general importance. It is not that thing which we discussed earlier which relates to the constitutional validity and so on There is jurisdiction vested in the Supreme Court and any private citizen can go to the Supreme Court and file a petition. Take for example the Income-tax Act. A question may arise as to the interpretation of a particular section of the Income-tax Act. The interests of the vast number of assessees in the country and also of the Revenue Department are involved. Here it is a question of general importance and there is no doubt about it. There the Attorney-General can say that you can better look into this matter because this decision is going to affect the interpretation of statutes which will affect large numbers of people and of course the Government too in income tax cases and therefore it is better that the supreme court decides such cases. The approach to the supreme court is not coming under this law but it is under the earlier law which we have already discussed.

Clause 25—*Insertion of new article 144A. Special provisions as to disposal of questions relating to validity of laws*

PROF S L SAKSENA: I beg to move:

"Page 7,—

Omit lines 48 to 47 (61)

SHRI SHANKERRAO SAVANT (Kolaba)· I beg to move:

Page 7,—

after line 47, *insert*—

"*Explanation*—For calculating two-third number of judges the number arrived at by arithmetical calculation shall be rounded to the next full digit" (89)

Page 7,—

after line 47, *insert*—

"(3) While declaring any law either under this article or under article 141 the Supreme Court shall have power only to find the law and shall not have power to make the law" (611)

प्रो० एस० एल० सक्सेना : I have already moved my amendment which says:

"Page 7,—

Omit lines 43 to 47."

इसमें कहा क्या है कि सात जजेज की बेंच होगी। ठीक है, लेकिन सात जजेज में कम से कम जो तिहाई एक मत से वोट करेंगे तभी जजमेंट वैलिड माना जाएगा वरना नहीं। सात जजेज की बेंच है उसमें पांच जजेज ने नहीं बल्कि चार जजेज ने एक राय दी फिर भी उनका जजमेंट नहीं माना जायेगा। मैं समझता हूं यह बिल्कुल एब्सर्ड बात होगी। एक तरफ से जो बात चार जजेज कहेंगे वह प्रिवेल नहीं करेगी, तीन जजेज की बात प्रिवेल करेगी। यह ठीक नहीं है। सात जजेज की बेंच में जो मैजारिटी की राय हो उसी को मानना चाहिये। वरना सात जजेज की बेंच में चार की स्ट्रेंथ तो सिंगिल रही और तीन की स्ट्रेंथ डबल हो गई। यह बिल्कुल गलत चीज है और इसको निकाल देना चाहिये।

SHRI SHANKERRAO SAVANT: I will speak on both the amendments. My first amendment No. 89 is clarificatory in nature. As far as Clause 25 is concerned, we have now laid down for the first time that the number of judges to decide these things will be two-thirds and not the ordinary majority for that purpose. I have put the explanation here for calculating this two-third number of judges. It will be the number arrived at by arithmetical calculation which shall be rounded off to the next full digit.

Now, as it is, the minimum number of judges is 7 and two-thirds of it will give the figure 4 2/3. Either they have to found it off or the fraction will have to be omitted. So far as the commercial practice is concerned fraction much below. 5 is omitted while the fraction above .5 is rounded off to the next digit. But, then, this is only a convention and not a rule of law.

Even in the General Clauses Act, I have not been able to find any provision. But, so far as Parliamentary procedure is concerned, I have got the Modern Parliamentary Procedure with me. At page 131 it says that so far as two-thirds votes are concerned, "in the arithmetic of determining two-third final votes fractions are given a full vote. For example, two-thirds of fourteen is considered to be ten." This also is a convention and not rule of law.

My contention is that this being a constitutional amendment Bill, it will have to be foolproof and knave-proof and therefore, there should be a specific provision in the Constitution itself with an explanation that the arithmetical number so arrived at, if it is a fraction will be rounded off to the next full digit. I have got the General Clauses Act with me and I have gone through it. I do not see any provision to this effect. It is completely silent over it.

I now come to my next amendment to Clause 25. It is like this:

> "While declaring any law either under this article or under article 141, the Supreme Court shall have power only to find the law and shall not have power to make the law."

You will please see that this has arisen out of the Golaknath's case. It was specifically laid down by the majority judgment that the Supreme Court has got the power not only to find the law but also to take the law. As a consequence of that statement, they even proceeded to make law. They imported from American decisions the highly debatable principle of prospective over-ruling. It is not accepted in any of the Commonwealth Countries. It is now learnt that it is not in vogue even in America. This particular proposition that the Supreme Court can make laws has not been defined precisely. We are trying to do away with the mischief done by the Golaknath's case. Even in the Keshavanand Bharati's case the proposition that the Supreme Court can make law is not ruled out by the judges of the Supreme Court. So, it

[Shri Shankerrao Savant]

is necessary that we should provide specifically that the Supreme Court has got the power only to find law and not to make law.

It is with that intention that I have put in this particular amendment namely that while declaring any law either under this article or under article 141, the Supreme Court shall have power only to find the law and not to make the law.

So, my request to the hon. Minister is that he may consider both my amendments—one is necessary for clarification and the other is my substantive amendment and it will be absolutely necessary to do away with the mischief done in by Golak Nath's case.

SHRI H. R. GOKHALE: Sir, I am not in a position to accept his amendments. Firstly, my hon. friend said that he has not seen the provision at all in the General Clauses Act. My recollection is that there is a section in the General Clauses Act. Even if that is not there in the Act, the point here is that the Supreme Court is given the specific power to frame rules and the intention of Parliament is so clearly expressed that this will be the minimum number required.

I am sure that no court will do anything which will only help in defeating this purpose. Even when we try to make laws, we are always positive on this that the Supreme Court can make law only in the sense that it can interpret the law and nothing beyond that. If there is any ambiguity with regard to any law or if there is any difficulty with regard to its interpretation, by setting at rest any controversy as to its interpretation, their interpretation is final which becomes law.

It is only in that sense that they make law. I do not find that any such provision is necessary here in the Constitution.

Clause 26— (*Amendment of article 145*)

PROF. S. L. SAKSENA: I beg to move:

Page 8, lines 7 and 8,—

for "provisions of article 144A and of clause (3)" *substitute* "provisions of article 144A(1) and of clause (3)" (62).

Page 8, line 10,—*for* "article 144A" *substitute* "article 144A(1)" (63).

I just move the amendments.

SHRI H. R. GOKHALE: I have nothing to add.

MR DEPUTY-SPEAKER: Clause 27. There are no amendments.

Clause 28— (*Amendment of article 1*

PROF. S. L. SAKSENA: I beg to move:

Page 8, line 19,—*after* "No court" *insert*— "exctpt the Supreme Court", (64).

SHRI RAMAVATAR SHASTRI: I beg to move:

Page 8, hne 21,—*add* at the end—

"except in cases where such production is necessary to prevent failure of justice or misuse of power". (466).

PROF. S. L. SAKSENA: The original amendment is that no court or other authority shall be entitled to require the production of any rules made under clause (3) for the more convenient transaction of the business of the Government of the State. That means the High Courts and the Supreme Court cannot call for the production of those rules. This is a strange thing. If these courts think that in the interest of justice it is necessary to do so, why should they be barred from calling for their production? Why should there be any objection? These are the rules under which Government work. I see no reason for this objection unless there

is something to hide and they want to perpetrate some injustice which is very bad. Production of these rules is in the interest of the disposal of justice by the High Courts and the Supreme Court if they require them.

श्री राजावतार शास्त्री (पटना): उपाध्यक्ष जी, मेरा संशोधन नं० 466 संविधान के अनुच्छेद 166 से सम्बन्ध रखता है। अनुच्छेद 166 में सरकार जो संशोधन कर रही है, उसमें कहा गया है कि संविधान के अनुच्छेद 166 में, खण्ड (3) के पश्चात निम्नलिखित खण्ड अन्तःस्थापित किया जाएगा, अर्थात :—

> "(4) किसी न्यायालय या अन्य प्राधिकारी को यह हक नहीं होगा कि वह राज्य की सरकार का कार्य अधिक सुविधापूर्वक किए जाने के लिये खण्ड (3) के अधीन बनाए गए नियमों को पेश करने की अपेक्षा करे।"

हमारा संशोधन यह है कि "करने की" के पश्चात निम्नलिखित अन्तःस्थापित किया जाए :—

> "उन मामलों को छोड़कर जिन में न्याय की असफलता या शक्ति के दुरुपयोग को रोकने के लिये उनका पेश किया जाना आवश्यक है",

उपाध्यक्ष जी राष्ट्रपति द्वारा भारत सरकार को चलाने के लिये जो कुछ नियम समय समय पर बनाए जाते रहे हैं उनके सिलसिले में हम बहस कर चुके हैं। उसी तरह से राज्यपाल महोदय राज्य सरकारों को चलाने के लिये कुछ नियम बनाते हैं। यह संशोधन है, यह राज्य सरकारों से सम्बन्धित है। मेरा निवेदन यह है कि बहुत बार जो नियम बनाये जाते हैं, जो अभी आप व्यवस्था दे रहे हैं उसके मुताबिक उनको न्यायालय के सामने आप पेश करने की आज्ञा नहीं देंगे। राज्य सरकार किसी कर्मचारी को अगर नौकरी से मुअत्तल करती है या हटाती है, और उसके खिलाफ अगर कोई अपील करना चाहता है किसी न्यायालय में या किसी आपके द्वारा गठित न्यायाधिकरण के सामने और उस को उसको जरूरत पड़े कि उसकी मुअत्तिली के सिलसिले में, बरखास्तगी के सिलसिले में या रिमूवल के सिलसिले में गवर्नर साहब ने कोई नियम बनाया तो उसका वह आश्रय ले सके तो वह ऐसा नहीं कर सकेगा, उससे उसको आप वंचित रखना चाहते हैं। इसका अर्थ यह होगा कि उससे न्याय नहीं मिल सकेगा। किसी के साथ अगर कोई अन्याय किया गया है और वह उसका निराकरण करवाना चाहता है तो वह ऐसा नहीं करवा सकेगा। इसको सामने रख कर हमारे दल ने यह संशोधन पेश किया है। उसी तरह से कल जब हमारे दल के माननीय सदस्य श्री पंडा बोल रहे थे तो उन्होंने तमिलनाडु की डी० एम० के० सरकार का हवाला दिया था। किसी के कांट्रेक्ट का उन्होंने हवाला दिया था। उसके सिलसिले में कोई नियम बनाए गये थे। सरकारिया कमीशन चल रहा है। उनको उस तरह के नियमों की आवश्यकता है छानबीन करने के लिये। वहां कैन्ट्रैक्ट चीफ मिनिस्टर ने दिए और उनको अधिकार था या नहीं, किसी अधिकारी ने दिये ? इन सबकी छानबीन तभी हो सकेगी, नियम ठीक बनाए गए या नहीं, कांट्रेक्ट नियमों के मुताबिक दिया गया या नहीं. इन तमाम बातों का तभी पता चल सकता है जब नियम उपलब्ध किए जायें। सच्चाई जानने के लिये कई बार यह जरूरी हो जाता है कि उन नियमों को न्यायालय के सामने पेश किया जाए, एपेलेट आथोरिटी के सामने पेश किया जाए और यह हक उनको होना चाहिये।

तीसरी बात ट्रेड यूनियनों की है। रेल कर्मचारी तो आपसे सम्बन्ध रखते हैं। याद में कोई राज्य सरकार इस तरह नियम

[श्री रामावतार शास्त्री]

बनाती है जैसा अभी जिक्र किया गया था राउरकेला का वो उड़ीसा में है और वहां इमारतें सरैया जोकि मुसलमानों के परसनल ला की देखभाल करती है उसके बारे में सरकार ने कोई नियम बनाए हैं, सरकार ने वहां के बहुत से लोगों को गिरफ्तार कर लिया है, उनके दफ्तर की तलाशियां की गई हैं, अब अगर जिनके खिलाफ कोई कार्यवाही की गई है वे चाहें कि गवर्नर साहब ने इमारतों सरैया के संचालन के सिलसिले में कौन से नियम बनाए हैं और उनको वे पेश किया जाए तो इस धारा के तहत पेश नहीं हो सकेंगे।

मैं बिहार से आता हूं। बिहार की मिसाल दी गई है। सरकार ने वहां भूमि सुधार कानून बनाया। उन कानून पर राष्ट्रपति ने स्वीकृति दी नहीं। इसी बीच में सरकार ने दो हैक्टेयर तक बटाईदार जो जमीन रख सकता है और जिसके बटवारे का सवाल नहीं उठता है उस कानून के मुताबिक लेकिन झट से बिहार सरकार ने एक नियम निकाल दिया कि दो हैक्टेयर नहीं होगा एक हैक्टेयर होगा और इसका नतीजा यह हो गया कि बड़े पैमाने पर छोटे छोटे किसानों की जमीनें छीन ली गई। बिहार सरकार ने सर्कुलर किया या नियम बनाया तो न्याय पाने के लिये अगर कोई बटाईदार या कोई छोटा किसान उस नियम को पेश करना चाहेगा तो वह पेश नहीं कर सकेगा। इसका मतलब यह होगा कि उसे आप न्याय नहीं दिला सकेंगे, भले ही आप कितनी भी भूमि सुधार की बात करें, गरीबी मिटाने की बात कहें। अगर आप उन्हें इस तरह के नियमों को न्यायालय के सामने या न्यायाधिकरण के सामने अपने बचाव के लिये पेश करने का अधिकार नहीं देंगे तो वह गरीब मारा जाएगा। इसलिये मेरे संशोधन का यही आशय है कि ऐसे मामलों में आप उन्हें नियमों को पेश करने का अधिकार दें ताकि वह अपने हक में न्याय ले सकें और सरकार या गवर्नर द्वारा बनाये गये नियमों को पेश कर सकें। इस बात की इजाजत आप हर व्यक्ति को दीजिये, यही मेरे संशोधन का अर्थ है।

SHRI H. R. GOKHALE: The corresponding clause with regard to the rules for the convenient transaction of the business of the Central Government was discussed yesterday; and this is a clause relating to rules framed for the State government. At that time, I had dealt with these arguments rather elaborately.

First of all there is misundertanding because Mr. Panda raised more or less the same apprehensions which Mr. Shastri is raising. There is an impression that this applies to all the rules. It does not. It specifically refers only to the rules for the convenient transaction of business. Under the Constitution, two kinds of rules are required to be framed under Article 72. One is, what is known as the allocation of business rules; the other is what is known as the convenient transaction of business rules. The allocation of business rules are not referred to in this clause; and there is no bar on those rules being produced or on their being seen by anybody. In fact I said yesterday that the allocation of business indicates how, between the Ministries and between the Ministers, the business of the government is allocated. Every citizen is entitled to know that Mr. Gokhale has to deal with Law, Justice and Company Affairs and that some other Ministers have to deal with some other subjects which are assigned to them. Then only can the citizen approaoh that particular Minister or Ministry, for redress or for comments or may be, for getting something. But the convenient transaction of business is a different thing. The latter indicates how, for the purpose of internal administration, the government will transact the business—subject to the allocation between the various Ministries. These rules have nothing to do with other citizens. These are binding on the Ministers and officers and *inter se* between the Ministries also, so that the transaction of

business is smooth and expeditious. It is only these rules which are barred from production in the court of law.

A reference to the rules relating to government servants was made now; and similarly to the rules under various other enactments. They are not covered here. I cannot advise Mr. Shastri in regard to any particular case. I do not know the facts of that case. But I can say that under this clause, there is no bar on the production of any other rules. There might be a case where under the general law, e.g. under Section 123 of the Indian Evidence Act, if I remember correctly, a privilege can be claimed on the ground that it is in the interests of the States and so on. I am not dealing with those things; but that cannot be a comment on this clause because this clause does not relate to those rules at all. Nobody can take up this clause and say that the rules framed by the Railways, or those relating to government servants are barred. If this apprehension is removed. I hope there should be no ground for complaint with regard to this.

MR. DEPUTY-SPEAKER: Clause 29. Mr. Stephen, Mr. Alagesan, Mr. B. V. Naik, they are not there. So, we go over to Clause 30.

Clause 30—(*Amendment of article 172*)

MR. DEPUTY-SPEAKER: Mr. Bibhuti Mishra, Mr. Parthasarathy, not present. Amendment No. 280 by Shri Shibban Lal Saksena is an amendment to Mr. Parthasarthy's amendment. As Mr. Parthasarathy is not moving, Mr. Saksena cannot move an amendment to a non-existing amendment

Mr. Ramavtar Shastri may move his amendment. The other Members are not present.

SHRI RAMAVTAR SHASTRI: I beg to move:

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for Clause 30, *substitute*—

"30. In article 172 of the Constitution, for clause (1) the following shall be substituted, *namely*:

"(1) Every Legislative Assembly of every State unless sooner dissolved shall continue for a period not exceeding five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly.".' (467)

उपाध्यक्ष महोदय, खण्ड 30 के अनुसार सरकार राज्य विधान सभाओं की मियाद को 5 बरस से बढ़ा कर 6 बरस करने जा रही है। इसी तरह का संशोधन लोक-सभा के सिलसिले में भी पेश किया गया है, जिस पर हम इसके पहले बहस कर चुके हैं। खण्ड 30 के बारे में मेरा संशोधन संख्या 467 इस प्रकार है—

खण्ड 39 के स्थान पर निम्नलिखित प्रतिस्थापित किया जाए,—

'30. संविधान के अनुच्छेद 172 के उपखंड (1) के स्थान पर निम्नलिखित प्रतिस्थापित किया जायगा; अर्थात :—

"(1) प्रत्येक राज्य की प्रत्येक विधान सभा, यदि पहले ही विघटित न कर दी जाये तो, अपने प्रथम अधिवेशन के लिये नियुक्त तारीख से पांच वर्ष से अधिक कालावधि तक चालू रहेगी और इससे अधिक नहीं तथा पांच वर्ष की उक्त कालावधि की समाप्ति का परिणाम विधान-सभा का विघटन होगा"।'

जब लोक सभा की मियाद पांच वर्ष से छः वर्ष बढ़ाने के सम्बन्ध में विचार हो रहा था, तो हमारे नेता, श्री इन्द्रजीत गुप्त, और श्री एस० एम० बनर्जी ने कम्युनिस्ट पार्टी की यह नीति स्पष्ट रूप से सदन के सामने रख दी थी कि हम किसी भी कीमत पर न लोक सभा की और न विधान सभाओं की अवधि को पांच वर्ष से अधिक बढ़ाना चाहते हैं।

जो माननीय सदस्य पांच वर्ष की अवधि को बढ़ा कर छः वर्ष करने की वकालत कर

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रहे थे, उन्होंने कई तरह की दलीलें दीं। विधि मंत्री ने उन में से कुछ दलीलें का वजन स्वीकार करने की घोषणा की। मुझे अब तक मालूम नहीं हो सका कि उन में क्या वजन है। उन्होंने एक बात यह कही कि जब राज्य सभा की अवधि छः साल है, तो हमारी अवधि क्यों पांच साल रहे, हम उन से छोटे नहीं हैं, हम दोनों समान हैं, इसलिए दोनों की अवधि समान रहनी चाहिये। शायद मंत्री महोदय यही जवाब विधान सभा के बारे में दे दें, क्योंकि विधान परिषद की अवधि भी छः साल है। मैं विधि मंत्री के इस विचार से सहमत नहीं हूं कि विधान सभा की अवधि को भी बढ़ा कर छः साल कर दिया जाये।

एक तर्क यह दिया गया था कि 20 सूत्री कार्यक्रम की कार्यान्विति के लिये लोक सभा की अवधि बढ़ाना आवश्यक है। इस समय भी यह दलील दी जा सकती है कि मुख्य रूप से राज्यों को ही 20 सूत्री कार्यक्रम पूरा करना है, इस लिये विधान सभाओं की अवधि को भी बढ़ा दिया जाये। अच्छा यह होता कि यह संशोधन लाने से पहले सरकार यह विचार कर लेती कि पिछले सोलह महीनों में हम 20-सूत्री कार्यक्रम की क्रियान्वित की दिशा में कहां तक आगे बढ़े हैं, उस में कौन सी बाधायें हैं और उन को कैसे हटाना चाहिये। हम इस संविधान में समाजवाद और धर्म निरपेक्षता की नीति अंगीकार कर रहे हैं, जिस का हम ने, और पूरे देश ने हृदय से स्वागत किया है। हम समाजवाद को कैसे लागू करना चाहते हैं, अगर सरकार इस बारे में कुछ जानकारी देती, तो हमें यह सोचने में मदद मिल सकती थी कि हम इतना आगे बढ़ गये है, और यदि लोक सभा की अवधि को एक-आध साल और बढ़ा दिया जाये, तो हम बहुत ज्यादा प्रगति कर लेंगे। लेकिन सरकार ने इस विषय पर कोई प्रकाश नहीं डाला।

हमने शुरू में 29-सूत्री कार्यक्रम और आपातकालीन स्थिति का इसीलिए हृदय से स्वागत किया था कि सरकार दक्षिण पंथी और क्रान्ति करने वाले लोगों की नीतियों का विरोध करना चाहती है और उन पर अंकुश लगाना चाहती है। लेकिन हम देखते हैं कि किसानों, मजदूरों, कमजोर वर्ग के लोगों और अल्पसंख्यकों को तरह तरह से परेशान किया जा रहा है। कहीं जमीन के संघर्ष के नाम पर गोली चल रही है और कहीं परिवार नियोजन के नाम पर गोली चल रही है। निर्दोष लोगों की मीसा और डी० आई० आर० के अन्तर्गत बन्द किया जा रहा है। बिहार के सीतामढ़ी जिले में हमारे दल की डिस्ट्रिक्ट कौंसिल को घर में बैठक करने की इजाजत नहीं दी गई और उपस्थित लोगों पर डी० आई० आर० के मुकदमे चला दिये गये।

क्या हम अपनी कमेटी की मीटिंग नहीं कर सकते? तो यह सारी आप की उपलब्धियां इधर हो रही हैं। क्या इन्हीं उपलब्धियों के लिए आप विधान सभाओं की अवधि बढ़ाना चाहते हैं? क्या इन्हीं उपलब्धियों के लिये आप लोक सभा की अवधि बढ़ाना चाहते है? इसलिये यह दलील समझ में नहीं आई। अब तो मैं यह कहूंगा कि आप जनता के सामने चलिये। विधान सभाओं को भी पांच साल के अन्दर आप चुनाव में जाने दीजिये और हम भी चलते हैं चुनाव में। वहां चल कर जनता के सामने अपनी वैदेशिक नीति को आप रखते, घरेलू नीति को रखते और प्रति-क्रान्तिवादियों की नीतियों का पर्दा फाश करते, जनता को शिक्षित करते कि यह काम जरूरी था इसलिये चुनाव की जरूरत है। तीन चार महीने में आप का चुनाव हो जाता, जनता शिक्षित हो जाती। आप की नीतियां की सामने आ जातीं और जो हमारे विरोधी दलों के लोग हैं जिन मे बहुत सी नीतियों के हम विरोधी हैं, उन को भी मौका मिल जाता अपनी नीतियों को जनता के सामने रखने का। जनता फैसला कर लेती कि देश किधर जायगा, समाज किधर जायगा, प्रगतिशील शक्तियों की जीत होगी या प्रतिगामी शक्तियों की जीत होगी। इसका फैसला दो तीन महीने

में हो जाता तो इस से आप की आर्थिक प्रगति में कौन सा नुकसान हो जाता कौन सी योजना आप की ठप्प हो जाती तीन महीनों में ? इसलिए मैं कहता हूं कि जनता को मौका दीजिए अपने कार्यक्रमों की परीक्षा करने के लिए, तमाम दलों के कार्यक्रमों की परीक्षा करने के लिए और मुझे विश्वास है कि भारतीय जनता प्रगतिशील दलों को, प्रगतिशील व्यक्तियों और तत्वों को असेंबलियों और पार्लियामेंट में विशाल बहुमत से चुन कर भेजेगी। लेकिन जैसी नीति आप अपना रहे हैं इस से जनता आप से विदकेगी, अप्रसन्न होगी और समझेगी कि आप येन केन प्रकारेण गद्दी पर बैठे रहना चाहते हैं। यह उचित नहीं है। इसलिए मैं इस का विरोध करता हूं। पांच साल में इन का चुनाव होना चाहिए और जिस दिन पहली बैठक बुलायी जाय उस के बाद जिस दिन पांच वर्ष पूरे हो जायें उस दिन से विधान सभा अपने आप विघटित मानी जाय।

SHRI BIBHUTI MISHRA: I would request you to let me move my amendment. I had gone to have something as I will have to sit till 8.00 p.m. There is only one amendment.

MR DEPUTY-SPEAKER: The amendment cannot be moved now; you can make some observations if you like.

SHRI BIBHUTI MISHRA: I want to move my amendment.

MR. DEPUTY SPEAKER: No, it is against the rules. You may speak on it.

श्री विभूति मिश्र : उपाध्यक्ष महोदय, यह भिड़ाई दो शास्त्रियों में हो गई। ये जूनियर शास्त्री हैं और मैं सीनियर शास्त्री हूं। यह जो इन्होंने कहा कि इन लोगों का कोई ठिकाना नहीं है। 1952 के बाद से इस हाउस में मैंने देखा कि हम लोगों का ये बड़ा विरोध करते थे पंडित जी के जमाने में औरछाज समय पा कर हमारे साथ हो गए हमारा समर्थन भी करते हैं और विरोध भी करते हैं। यह 20 सूत्री कार्यक्रम जैसा विधि मंत्री ने बताया इस को अगर हम पूरा नहीं करेंगे तो ये कहेंगे कि पूरा क्यों नहीं किया ? अगर एक साल में पूरा नहीं हुआ तो एक साल और ले कर पूरा कर लेते। क्योंकि इन के नेता ने भाषण दिया था कि 20 सूत्री कार्यक्रम के लिए हम ने पन्द्रह दिन दिया हैं तो उस को आगे बढ़ाए। हम को इस समय काम देखना हैं काम को सफलीभूत करना है या चुनाव देखना हैं। ये दोनों तरफ छुरी रखते हैं। आपात में भी मेल जोल करते हैं सी पी एम और सी पी आई और हमारे साथ भी मेल जोल रखते हैं। अब आगे क्या करेंगे यह कहना मुश्किल है। हम ने इन की पार्टी का इतिहास चीन में देखा, रूस में देखा...(व्यवधान).....

MR. DEPUTY SPEAKER: It is for him to reply, not for you.

श्री विभूति मिश्र : जरा इन का जवाब सून ले।..... (व्यवधान)..... जब हम फ्रीडम मूवमेंट में काम करते थे तो ये लोग हमें पकड़वाते थे और अब हमारे साथ कैसे हो गए ?

मुझे यही कहना है कि ला मिनिस्टर ने जो कहा है वह बहुत सही कहा हैं और वही करना चाहिए।

SHRI H. R. GOKHALE: I do not wish to make a long speech again because the issue here is the same. When we were discussing Clause 17, I have already replied to almost all the points which Mr. Ramavtar Shastri has raised now. The only difference is that he has already anticipated my argument and said if the Councils have six years, why not the Assemblies? There is one more argument. There has been a parity between Assemblies and Lok Sabha. The term Assemblies is five years and that of Lok Sabha is five years and if the term of Lok

[Shri H. R. Gokhale]

Sabha is raised to six years, there is no reason why that of the Assemblies should not be raised to six years.

MR. DEPUTY-SPEAKER: We go over to Clause 31.

MR. NIMBALKAR: He is not present. We go over to Clause 32 Mr. Priya Ranjan Das Munsi. He is also not present.

We go over to Clause 33.

Clause 33 (*Substitution of new article for article 192. Decision on questions as to disqualification*)

PROF S. L. SAKSENA: I beg to move:

Page 9, lines 35 and 36,—

for "consult the Election Commission and the Election Commission may, for this purpose, make such inquiry as it thinks fit".

Substitute "obtain the opinion of the Election Commission and shall act according to it" (65)

SHRI RAMAVATAR SHASTRI: I beg to move:

Page 9, line 32,—

for "President" *substitute*—

"House of the Legislature of a State to which the member belongs" (468).

Page 9, lines 34 and 35,—

for "President and his" *substitute*—

"House of the Legislature of a State to which the member belongs and its" (469).

15.26 hrs.

[SHRI P. PARASARATHY *in the Chair*]

PROF. S. L. SAKSENA: My amendment is as follows:—

"*for* 'consult the Election Commission and the Election Commission may, for this purpose, make such inquiry as it thinks fit' *Substitute* 'obtain the opinion of the Election Commission and shall act according to it.'."

The present amendment in Clause 33(2) reads as follows:—

"Before giving any decision on any such question, the President shall consult the Election Commission and the Election Commission may, for this purpose, make such inquiry as it thinks fit."

The original article 192(2) reads as follows:—

"Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion."

We, in the Constituent Assembly, had taken special care to see that the independent authority and rights and powers of the President, the Supreme Court, the Election Commission, the Comptroller and Auditor General, and so on were jealously safeguarded. But, by this Amendment, all these powers are transferred to the Prime Minister. This is most obnoxious. That is why, it is being criticised by the Opposition as follows:—

"The net effect of the 44th Amendment is to take away the rights and powers of the President, the Legislatures, the judiciary, the States, the UPSC the Election Commission, and the Comptroller and Auditor General. In each case, the power is transferred not just to the Central Executive but to the chief executive, namely, the Prime Minister who emerges all-powerful and above the law. Such an enormous accretion of power in the hands of a single person is dangerous and liable to misuse. However, in view of recent experience of the arbitrary exercise of authority, such a total concentration of power cannot be regarded as innocent or accidental and would spell the end of individual liberty and democratic institutions which

millions of Indians have unitedly struggled to win and uphold."

Why should the Election Commission be only consulted? When it makes an inquiry its findings should be accepted, it should be binding, it must be obeyed and followed. Nothing has happened in the last 27 years warranting any change. I hope that the Election Commission will be respected, and the original Clause will be allowed to stand.

SHRIMATI BHARGAVI THANKAPPAN (Adoor): Mr. Chairman, Sir, the proposed clause 33 in the Bill deals with the question of disqualification of the Members of Parliament as well as the State Legislatures. It says that the question of disqualification and the matters connected therewith shall be referred for the decision of the President and his decision shall be final. In this context, I would like to say that taking away this power from the judiciary, as in the past, is a step in the right direction and we welcome that, but you are investing this power with the executive to which we cannot agree. Although the President is the Head of the State, but he is not at all answerable to the people, because he is not elected directly by the people. Not only that, he acts according to the will and pleasure of the executive and according to their whims and fancies..

We have moved our amendments suggesting that the power to take a final decision in such cases should be vested with the Parliament or the State Legislature, as the case may be, because it is there where the will of the people is reflected. With this spirit, we have moved our amendments for the consideration of the House. I am sure, the hon. Law Minister would consider the amendments.

श्री विजयपाल सिंह (मुजफ्फर नगर) : सभापति महोदय, इस बिल की मंशा यह है कि इलेक्शन के दौरान जो करप्ट प्रेक्टिस होगी, उस की सुनवाई और फैसला राष्ट्रपति महोदय करेंगे। एक बात बिल्कुल साफ है कि राष्ट्रपति जी पर एक पार्टी का प्रभाव रहेगा; इस लिये जो इन्साफ मिलना चाहिये वह नहीं मिल पायेगा। इस लिये मेरी राय है कि जिस मेम्बर के खिलाफ करप्ट प्रैक्टिस की बात हो, उस के हाउस में ही डिस्कशन के बाद फैसला किया जाए। अगर आप ऐसा नहीं करेंगे तो इन्साफ की कोई आशा नहीं की जा सकती है।

SHRI H. R. GOKHALE: This clause is similar to the one which we discussed in the morning and I have given an elaborate reply. As pointed out, though the power is going to be vested in the President, he has to consult the Election Commission, and the Election Commission has to make an enquiry, as it thinks fit. While the power is absolute to look at the language, normally one would expect the President, not to brush aside the advice of the Election Commission and if that is the practice, which we expect to be followed, there is no reason why we cannot trust the Head of the State.

PROF. S. L. SAKSENA: Why this change?

SHRI H. R. GOKHALE: Unfortunately, when I spoke for 30—40 minutes, you were not here. In the past, we have been experiencing certain difficulties. Originally, the power was only with the courts. If some corrupt practice was found by the court, the disqualification was automatic for six years. We have to change it. Some corrupt practices are of such a minor nature that a disqualification is not justified. Therefore, some power has to be vested in some authority to determine whether the disqualification should be removed, or if not removed, what should be the disqualification, or if there is a disqualification, to what extent it should be removed, reduced and so on and so far. All these are taken care of in this clause. This is the reason.

Clause 34— (*Amendment of article 194*)

PROF. S. L. SAKSENA: I beg to move:

Page 9, line 42,—

add at the end—

"or be defined by it" (86)

SHRI H. R. GOKHALE: I beg to move:

Page 9, *for* lines 41 and 42, *substitute*—

"committees of a House of such Legislature shall be those of that House, and of its members and committees, at the commencement of section 34 of the Constitution (Forty-second Amendment) Act, 1976, and as may be evolved by such House of the Legislature of a State, so far as may be, in accordance with those of the House of the People, and of its members and committees where such House is the Legislative Assembly and in accordance with those of the Council of States, and of its members and committees where such House is the Legislative Council." (447)

SHRI INDRAJIT GUPTA: I beg to move:

Page 9, line 42—

for "be evolved" *substitute*—

"laid down by law" (470)

PROF. S. L. SAKSENA: My amendment is to clause (3) as proposed. which reads:

"(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature shall be such as may from time to time be evolved by the House."

As I have already said, 27 years have passed but our House has not been able to codify the privileges. I have only added the words 'or be defined by it'. Mr. Gokhale was saying that he wants to bring some amendments. I think he will accept my amendment.

SHRI H. R. GOKHALE: I have moved an amendment. As it is obvious from the original clause, the main purpose of the proposed new clause is that in Art. 199 as it is to-day, there was a reference to the House of Commons of the Parliament of England. As in the other clause which we discussed earlier, I think all of us will agree that after all these years, a reference to the Parliament of a foreign country is not at all desirable....

SHRI C. M. STEPHEN: Not very dignified also.

SHRI H. R. GOKHALE: Therefore, the reference to the House of Commons is removed and instead of that, what is said in the amendment which I have moved is that such privileges as exist or will exist on the day this Act (this amendment Act) will come into force will be the privileges. That means, of course, those very same privileges but not referring to the House of Commons. We have to ascertain from one source or the other what those privileges were, for guidance only and regard them as our privileges till, of course, the privileges are evolved by the legislatures themselves.

Now there is a slight difference between the amendments regarding privileges of Parliament and privileges of State Legislatures. It is high time that in respect of the privileges of the legislatures the reference to the House of Commons must undoubtedly go but why should they not look to the Parliament of our own country? If they have any difficulty and if they have no privileges of their own in any particular respect, then they need not look to the privileges of the House of Commons, 'the existing privileges' as we have said, but to look to the privileges of the House of People in case

of the Legislative Assembly and to the Rajya Sabha in case of the Legislative Councils. Therefore, now three changes are made, (1) to remove the term, House of Commons (2) to have their own privileges and (3) that they look not to any foreign country but to the Parliament of this country for the guidance and determination of their own privileges. This is the substance of this new amendment

श्री छारखण्डे राव (घोसी : चेयरमैन साहब; क्लाज 34 में सरकार की ओर से संविधान के अनुच्छेद 194 के खण्ड (3) की जगह पर जो नया खण्ड प्रस्थापित किया गया है, उसकी जगह हमारी पार्टी की ओर से एक तरमीम दी गई है कि "विकसित" के स्थान पर "विधि द्वारा अधिकथित" प्रतिस्थापित किया जाये ।

मान्यवर; यह संशोधन केवल दो शब्दों का है और मैं समझता हूं कि इसे स्वीकार करने में मंत्री जी को कोई दिक्कत नही होनी चाहिये । सरकार की ओर से जो तरमीम दी गई है उस मे ऐसा लिखा है कि "....जैसी राज्य का विधान मंडल समय समय पर विकसित करे" । अंग्रेजी में है "be evolved" हम इस की जगह यह चाहते हैं कि "विधि द्वारा अधिकथित" अर्थात अंग्रेजी में "laid down by law" । तो इस को मानने में मंत्री जी को कोई दिक्कत नही होनी चाहिये। अगर मंत्री जी के दिमाग में यह है कि हमारे देश में प्रजातंत्र के रहते शासन का परिवर्तन सम्भव है, और 1967 में हमारे देश के अन्दर 10 राज्यों में कांग्रेस की सरकारे नहीं स्थापित हो सकी जो एक ऐतिहासिक सत्य है, तो उस को देखते ए यह सम्भव है कि आगे भी किसी सूबे में ऐसा हो कि कांग्रेस की सरकार न बने, केन्द्र में भी ऐसी सम्भावना को बिल्कुल खत्म नहीं किया जा सकता । इसलिये हमें कानून ऐसा बनाना चाहिये कि राज्य किसी दल का हो, या कई दलों की मिश्रित सरकार का हो, सभी सम्भावनाये हो सकती हैं, हमारे देश में पिछले 29 साल में हुई हैं, तो हमें ऐसी विधि बनानी चाहिये जिस में कोई उस का दुरुपयोग न हो सके और न उस की सम्भावना हो । सलिये मैं मंत्री जी से चाहूंगा कि "विधि द्वारा अधिकथित" यह ज्यादा मजबूत है और इस के जरिये किसी प्रकार के दुरुपयोग की सम्भावना नहीं है । और अगर उन के मन स्थल पर यह चित्र अंकित है कि कांग्रेस का ही विधान मण्डलों में हमेशा बहुमत रहेगा, उस से प्रेरित हो कर यह लिखा गया है तो सही नहीं है । आज आप ने जो घोषणा की है वर्तमान लोक सभा की अवधि 7 वर्ष की, मुझे लगता है कि सारे देश के अन्दर एक प्रश्न पैदा होगा, आप इसे नोट कर लें, कि चुनाव टालने का यह बहाना है, चुनाव से कांग्रेस पार्टी डर गई है । हम यह नहीं कहते कि आप डर गये हैं, लेकिन लोगों में यह भावना पैदा होगी कि डर गये । इसलिये मैं कहना चाहता हूं कि उन भावनाओं में यह भाव नही पैदा होना चाहिए । हम कोई चीज नही चाहते यही पर्याप्त नही है, लोग भी यही समझें कि हम वह चीज नही चाहते । तब हमारी सफलता है । इसलिए मेरा सुझाव है कि अगर सरकार के दिमाग में हमेशा हमेशा के लिये राज गद्दी पर ऐन केन प्रकरण रहने का विचार नही है तो हमारे सशोधन को मान लेना चाहिए ।

माननीय विभूति मिश्रा जी ने जिस बात की चलते चलते चर्चा की, मैं कहना चाहता हू कि हमारी पार्टी आप की पार्टी के साथ सम्बन्ध में कोई चोरी छिपे नही है, बल्कि विश्व विख्यात राजनीति की यह बात है । एकता और संघर्ष को आप समझते हैं । तो आप के हर अच्छे काम का हम समर्थन करेंगे, करते रहे हैं और आगे भी करेंगे । लेकिन गलत काम होगा, गलत नीति होगी तो उस का विरोध करेंगे और कर रहे हैं । आज ही

[श्री आरबले राव]

हमारी पार्टी के जनरल सेक्रेटरी ने बयान दिया है कि मार्क्सवादी कम्युनिस्ट पार्टी के सदस्यों को इस लोक सभा का बहिष्कार इस बार नहीं करना चाहिए था। उन को यहां आ कर अपने विचार रखने चाहिये थे। हिन्दुस्तान की प्रतिक्रियावादी और दक्षिणपंथी पार्टियों के साथ रूका बना कर इस समय चल रहे हैं, यह नीति सही नहीं है। तो ऐसा कहना और उन को समझाना कोई गलत बात नहीं है। अगर वह भी हमारे साथ होते, हमारे साथ आवाज मिला कर लोक सभा में काम करते तो आप पर उस का ज्यादा असर पड़ता। इसलिये आप हमारी पौलिसी को चाहे गलत समझें या सही समझें यह आप का अधिकार है। और संसार में सब को अधिकार है। लेकिन उसमें कोई एम्बीगुइटी, कोई दुविधा नहीं है, कोई हैसितना नहीं है। कथनी कुछ है और करनी कुछ है, ऐसी बात नहीं है। हमारी नीति का मूल मंत्र एकता और संघर्ष है।

इसलिये आज की घोषणा के बाद मंत्री जी मुझे भी सन्देह हो गया है कि एन-केन-प्रकारेण आप अपनी गद्दी बनाना चाहते हैं, चुनाव टालना चाहते हैं। हिन्दुस्तान की जनता जो आपके पक्ष में है, उसको भी आपने असमंजस में डाल दिया और जो जनता आपके खिलाफ है, उसको तो चिन्ता होगी ही। वह तो चार्ज लगायेगी ही आपके ऊपर भी और हमारे ऊपर भी कि मिलजुलकर चुनाव टाल दिया और एक साल लोक सभा की जिन्दगी हम सदस्यों की अवैध बिना चुनाव के और बढ़ गई। इससे एक अविश्वास पैदा होता कि कांग्रेस गद्दी पर हर हालत में रहना चाहती है और चुनाव हमेशा के लिये कोई न कोई बहाना बनाकर टालना चाहते हैं इसलिये 5 वर्ष का 6 किया और अब 7 वर्ष कर दिया। इसलिये मैं आपसे अनुरोध करूंगा कि आप मेरे इस संशोधन को स्वीकार कर लें, यह आपकी मंशा को ही पूर्ण करेगा।

SHRI H. R. GOKHALE: Sir, I do not accept the suggestion that this amendment is being moved because it is in the interest of the congress party and things like that. There is a good point which was made by Mr Stephan while speaking, when the earlier clause was discussed. That was as to whether any provision should be there enabling Parliament to make the law, or enabling the legislatures to make the law, in respect of their privileges. Now, I am considering the matter, as I said in the morning. If it is found necessary, I will bring an amendment to this on Monday. Therefore I do not accept the amendments moved. But I can say that I am considering the matter. The point is certainly worth consideration.

MR. CHAIRMAN: Clause 35. There are no amendments to Clause 35 We now go to Clause 36.

Clause 36-*Amendment of article 217.*

MR. CHAIRMAN: Now, amendments to be moved to Clause 36. Shri Bibhuti Mishra

SHRI BIBHUTI MISHRA: I beg to move.

Page 10, line 1,—

after "Constitution" *insert*—

"(a) after clause (1) the following clause shall be inserted namely—

"(1A) No person shall be appointed or posted as a judge of the High Court of the State to which he belongs or the State in which he ever worked for gain, and (b)". (12)

PROF S L SAKSENA I beg to move:

Page 10, line 1,—

after "the Constitution", *insert*—

'(a) for clause (1), the following clause shall be substituted, namely—

"(1) Every Judge of a High Court shall be elected by both Houses of Parliament" and (b)'. (259)

SHRI O. V. ALAGESAN (Tiruttani): I beg to move:

Page 10 line 1,—

after "Constitution" *insert*—

'(a) after clause (1), the following clause shall be inserted, namely—

"(1A). A judge so appointed shall not serve in the same High Court for more than five years", and (330)

Page 10, line 10,—*add* at the end—

'and after clause (3) the following clauses shall be inserted namely—

"(3) No High Court shall normality take more than three years to decide a case and if the period is exceeded with respect to any case, the High Court shall record the reasons for the delay.".' (331)

SHRI H. R. GOKHALE: I beg to move:

Page 10, *for* lines 1 to 10, *substitute*—

'Amendment of article 217.

36. In article 217 of the Constitution, in clause (2),—

(a) for sub-clause (a), the following sub-clause shall be substituted, *namely*—

"(a) has for at least ten years held in the territory of India a judicial office or the office of a member of a tribunal or held in the territory of India any post, under the Union or a State, requiring special knowledge of law and acquired legal experience; or";

(b) in sub-clause (b) the word "or" shall be inserted at the end;

(c) after sub-clause (b), the following sub-clause shall be inserted, namely—

"(c) is, in the opinion of the President, a diatinguished jurist.";

(d) in the *Explanation*, in clause (a), for the words "has held judicial office", the words "has held judicial office or the office of a member of a tribunal or held any post, under the Union or a State, requiring special knowledge of law and acquired legal experience" shall be substituted.'. (448).

श्री बिभूति मिश्र: सभापति महोदय, इस अमेंडमेंट को मैंने बहुत समझ-बूझकर आपके सामने प्रस्तुत किया है । इस अमेंडमेंट के प्रस्तुत करने का कारण मेरे दिमाग में तब आया जब यह बिल इन्ट्रोडयूस हुआ ।

मेरा जिला सारे हिन्दुस्तान में बहुत पिछड़ा हुआ है । अगर पिछड़ा हुआ न होता तो गांधी जी को दक्षिण अफ्रीका से आने के बाद चम्पारन में जाने की जरूरत न रहती । वहां पर मैंने देखा कि क्लर्क, टाइपिस्ट और छोटे-छोटे औहदे वालों की बहाली का नोटिस निकला और उनमें हाईकोर्ट्स के जजों का कुछ कुछ न इन्टररेस्ट पैदा हो गया । सूबे के हाई कोर्ट के जजों ने डिस्ट्रिक्ट जज के ऊपर किसी न किसी तरह से डायरेक्टली और इन-डायरेक्टली इन्फ्लुएंस कर के लोगों की बहाली कराई । लोगों ने मुझ से कहा । मैंने कहा कि मैंने आज तक जुडिशियरी के किसी आदमी से न्याय के सम्बन्ध में कभी कोई बात नहीं की और न करने वाला हूं क्योंकि जुडिशियरी को निष्पक्ष रखा जाना चाहिये । लेकिन बहुत से लोग मेरे पास आये और उन्होंने बताया कि कुछ की बहाली हो गई है और दूसरी जगहों के लोगों की भी बहाली हो गई है और इसमें हाई कोर्ट के जज इन्ट्रेस्ट लिये हैं । इस स्थिति में मैं यह सोचने लगा कि इस नाजायज काम को कैसे रोका जाये । संयोग से श्री गोखले यह संविधान संशोधन बिल लाये, तो मुझे इस सम्बन्ध में अपना संशोधन पेश करने का मौका मिला ।

आप जानते हैं कि हाई कोर्ट के जज साधारण परिवार के नहीं होते हैं, बल्कि वे

[श्री विद्यूत मित्र]

बड़े धनी परिवारों से आते हैं। उन के कई तरह सम्बन्धी होते हैं और उन के कई प्रकार के वैस्टिड इन्ट्रेस्ट भी बन जाते हैं। इस कारण जजों के अपनी ही स्टेट में बहाल होने के कारण बहुत गड़बड़ी पैदा हो गई है।

इसी तरह जब किसी स्टेट में दूसरी स्टेट के जज बहाल किये जाते है, तो चूंकि वे वहां बसना चाहते हैं, इस लिए वे अपनी सहूलियत के लिए लोगों को आबलाइज करना शुरू कर देते हैं, ताकि रिटायर होने के बाद जमीन मिल जाये और घर बनाने में सुविधा हो जाये, आदि।

इन कारणों से आम जनता के मन में जुडिशियरी के प्रति अविश्वास की भावना पैदा हो गई है। इसीलिए मैंने यह संशोधन पेश किया है कि किसी व्यक्ति को उस की अपनी स्टेट में जज नियुक्त न किया जाये। उदाहरण के लिए अगर पटना हाई कोर्ट में हम महाराष्ट्र, केरल, मद्रास, कर्नाटक और गुजरात आदि अन्य राज्यों के भी जज हों, तभी लोगों को न्याय मिल सकता है।

मंत्री महोदय इस संशोधन को स्वीकार करें या न करें, लेकिन उन को यह सोचना पड़ेगा कि अगर लोगों में यह भावना उत्पन्न हो गई है कि न्यायालय और सरकार उन को न्याय नहीं दिला सकती हैं, तो आज भले ही वे आवाज न उठाये और किसी कारण से दबे रहें, लेकिन हो सकता है कि किसी दिन उन के दिल की भावना उभर आये। मैं समझता हूं कि सरकार को यह बात मानने में कोई दिक्कत नहीं होनी चाहिए कि किसी व्यक्ति को उस की अपनी स्टेट में जज नियुक्त न किया जाये। प्रोमोटिड आई० ए० एस० और आई० पी० एस० आफिसर्ज के सम्बन्ध में भी मैंने यही स्थिति देखी है।

यह भी आवश्यक है कि अगर किसी दूसरी स्टेट का व्यक्ति जज नियुक्त हो, तो सरकार उस के क्रिमिनल तथा पोलीटिकल इन्ट्रेस्ट के बारे में जांच पड़ताल करे। सरकार के पास इनटेलिजेंस की इतनी व्यवस्था है कि उस को किसी भी आदमी के बारे में जानकारी प्राप्त करने में दिक्कत नहीं होनी। चन्द्रगुप्त का मंत्री चाणक्य था वह देश के लोगों और अन्य आवश्यक बातों के बारे में जानकारी रखता था, और अगर प्रशासन में कोई कठिनाई होती थी, तो वह उनको दूर करने की कोशिश करता था। चन्द्रगुप्त का राज्य फ़ारस की खाड़ी से ले कर बर्मा तक फैला हुआ था। लेकिन चूंकि उस का मंत्री अच्छा था, इस लिए उस का शासन सुचारू रूप से चलता था। हमारे मंत्री बहुत अच्छे हैं। उन को सारी व्यावहारिक बातें मालूम हैं। यह शरीर हाड़-मास का बना हुआ है। यह बायलजिकल फ़ैक्टर से गाइड होता है। इसलिए मैं चाहूंगा कि विधि मंत्री जी हमारे इन सुझावों को माने और नहीं मानें तो किसी और फ़ार्म में इसे लावें ताकि सेम जज सेम स्टेट में नहीं रहे। उस के वहां रहने से बहुत सी बातें पैदा होती हैं। लोगों को शक व सुबहा पैदा होता है कि फ़लां जज की वजह से यह बात हो गई और इस से जनता के दिमाग में जूडिशियरी के प्रति श्रद्धा धीरे-धीरे कम होती जा रही है। इसलिए विधि मंत्री जी से मैं प्रार्थना करता हूं कि इसे वह स्वीकार करें और इस फ़ार्म में नहीं करना चाहते तो किसी और फ़ार्म में इसे लाएं। लेकिन इतना मैं जरूर कहूंगा कि देश के हित में यह जरूरी है कि वह आदमी अपने स्थान पर न रहे, दूसरी जगह जाए।

श्री एस०एल०. सक्सैना : सभापति महोदय, यह आर्टिकल 217 का अमेंडमेंट है। 217 में हाई कोर्ट के जजेज अप्वाइंटमेंट का जिक्र है। इस में लिखा हुआ है कि किस तरह उस का अप्वाइंटमेंट होगा। ऐसा ही अमेंडमेंट सुप्रीम कोर्ट के बारे में कल हुआ है कल मैं मौजूद नहीं था। मेरा कहना यह है कि जब से आपने जस्टिस हैंगड़े इत्यादि

को हटाया है और वर्तमान चीफ जस्टिस को प्रतिष्ठित किया है तब से सुप्रीम कोर्ट में लोगों की आस्था बहुत घट गई है । लोग समझते हैं कि यह नामिनेटेड जजेज से पैक्ड है । ऐसा नहीं होना चाहिये । मेरी राय में जैसे यूनाइटेड स्टेट्स में होता है कि प्रेसीडेंट जिस नाम को नामिनेशन दे देता है उसका अप्रूवल वहां की सीनेट को दो तिहाई बहुमत से होता है ऐसे ही मैं चाहता हूं कि यहां पर भी प्रेसीडेंट जिस जज का नाम नामिनेट कर दे तो फिर दो-तिहाई बहुमत से जुआइन्ट सैशन में पार्लियामेंट के दोनो हाउसेज के लोग उनका अप्रूवल दें, तब उनका अप्वाइंटमेंट होना चाहिये । अगर वह अप्रूवल न दें तो नहीं होना चाहिये । इससे ऐसे हीं लोग नामिनेट किए जायेंगे जिनके बारे में उम्मीद होगी कि उनके नाम अप्रूव हो जायेंगे । तब इस तरह की फ़ोलिंग जैसी आज है नही होगी और इससे हमारी जूडिशियरी की शान बढ जाएगी और हाई कोर्ट की भी शान बढ़ जाएगी । यही मुझे निवेदन करना है ।

SHRI O. V. ALAGESAN: My amendment No. 330 is to the effect that no High Court Judge should work in the same High Court for more than five years. My friend, the veteran member of this House, Shri Bibhuti Mishra, pleaded that a Judge belonging to a particular State should not work in the High Court of that State. My amendment is not so drastic. But I would say that it is desirable, healthy and will establish healthy judicial traditions if a Judge is not required to work in the same High Court for more than 5 years. I know the hon. Law Minister will tell me that Art. 222 provides for such transfers. The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to another.

16 hrs.

What was happening in the older days? A man became a Judge towards the fag end of his life. He worked for five, six or at the most seven years and retired as Judge or as Chief Justice. Now there is a new phenomenon in the State High Courts. You find very young men appointed to the Bench. Some of them are in their early forties. What does this mean? He will be required to sit on the same Bench for over 20 years in the same High Court. I want you to reflect whether this will lead to healthy judicial traditions. The man becomes stale, he develops fixed ideas, people know what he may or may not do in a particular case. He develops likes and dislikes. All these come in the way of the proper discharge of his judicial duties.

So anybody who is in his forties who is appointed should know even when he is appointed that he will be liable to transfer after five years with the result that he may have to serve in at least three or four High Courts. If it is left to the discretion of Government, what happens? Pressures develop. The Law Minister would not be able to effect transfers. The person would like to continue there. He will quote other instances. This may not happen at all. What do we see in the administrative field? If a man serves in a particular station for three years, he is liable to transfer, without meaning any slur on his conduct: this has been a healthy practice. Similarly, a State Officer comes to the Centre and gets back to the State after five years or six years. There is rotation. Now it may not be happening and we find that it is not very good. A State Officer comes to the Centre and stays on or tries to stay on till the end.

So in the judicial field, if a judge knows beforehand that if he is to work as a judge for more than five years, he will be liable to transfer to another station after completion of five years in a particular state. it will be a good thing.

I have got another amendment with regard to delays in High Courts.

[Shri O. V. Alagesan]

The hon. Mover had much to say about lakhs of cases pending in various high courts of India. Quite a large number of them were attributed to writ jurisdiction of the High Courts. Even without writ jurisdiction there are several ordinary cases which are being delayed inordinately My amendment says that if a case is delayed beyond three years for some reason or the other, if a judgment is not given within three years, the judge dealing with that case should give reasons in writing for the delay This will be a healthy check on the working of the courts Here I should like to give an instance In the Madras High Court, the Chief Justice, not the present Chief Justice, and another judge heard an ordinary case; the judgment in that case was not delivered for one and a half years. Then they wanted a rehearing, after rehearing the case, they delivered the judgment. Naturally one of the parties thinks that if the judgment had been delivered at the earlier instance, the judgment would have been more in his favour than what it actually was. This leads to suspicion and unhealthy practices and so it is better that we require of the High Courts which are the highest courts in a state that cases are disposed of within a period of three years.

I have also given another amendment, but that is too late in the day to be taken up as a formal amendment. I should like to submit to the hon Mover that he has himself submitted an amendment to this particular clause, that is, 36 Mine is an amendment to his amendment His amendment says that a person should have held a judicial office for ten years or the office of a member of a tribunal or held any post, under the Union or State, requiring special knowledge of law and acquired legal experience to qualify for a High Court Judge. A new category of persons is brought in for the first time which goes beyond the judicial field. Now they want to bring in anybody who has held any post in Government requiring knowledge of law. This should not be.

Sir, this is too wide a door to be left open for non-judicial persons to enter the judiciary. I do not mean to say that we do not have administrative officers who have sufficient knowledge of law and who, in the course of their duties would have had acquaintance with law and its procedures and who may be desirable in other ways. But to open the door of High Courts to non-judicial people, to people who have no practice as lawyers or to people who have not held posts as judges or to people who have not even served in the tribunals, will not in my opinion be a healthy thing to do There may be many people who would like to cross over from the administrative field on the excuse of some experience or the other—somewhat connected with law and its working. On that account, some administrative officers would like to cross over to the High Court—which would not be a healthy thing to do For the first time we have such a clause intended to be put in, in the Constitution I do realize that the hon Mover would have given his thought to it But I would like him to give further thought to it.

SHRI C M. STEPHEN: I have a submission The amendment now is to clause 36. I had not moved an amendment to the amendment originally proposed. The hon. Minister has moved an amendment to that amendment. The present amendment is drastically different from the amendment originally proposed.

I want to speak on the amendment moved by the hon. Minister.

MR. CHAIRMAN: Don't you want to listen to his speech on the amendment?

SHRI C. M. STEPHEN: He has already moved his amendment.

SHRI O. V. ALAGESAN: I had given an amendment to that amendment, but because being so it was late, perhaps it has not been taken.

SHRI C. M. STEPHEN: This is a matter of very serious implications. This is an amendment to Article 217 which lays down the qualification for judgeship. The original qualification was 10 years judicial office or 10 years as an advocate. There was an Explanation which said that in computing the period for which a person was an advocate, the period which he occupied in judicial office will also be taken into account from the date on which he became an advocate. That was the original position. Now, by the original amendment, they made the addition to say that a jurist can also be appointed. Then they wanted to amend the Explanation alone; not anything else. They wanted to say that in the case of a person who has worked as a member of a tribunal, the period for which he has so worked, and in the case of a person who worked as a government servant requiring special legal knowledge that particular period, will also be taken into account for the purpose of computing the period during which he was an advocate. If he has completed the 10-year period as an advocate then, if before the completion of 10 years he had become a member of the tribunal, the period he was in the tribunal will also be taken into account for the purpose of computing the period he has been advocate. So also, if a person has been an advocate and subsequently became a government servant having special legal knowledge and all that, the period for which he was in government service will also be taken into account for computing the service as an advocate. Even that, to the extent it covers the government servant, on principle, was wrong.

Now the amendment is entirely different. Now the amendment is in regard to sub-clause (a), i.e., regarding judicial office. It is that which is amended, to say that if a person were working for a period as a judicial officer or if he had worked as a tribunal for a 10-year period or if he had been a government servant, it is not necessary that he should have been an advocate. It is not necessary for you to be law graduate at all. If you are Government servant anywhere serving in a post which requires special knowledge of law, if you have acquired special legal knowledge, then you can become a Judge of the High Court. This is what it has come to. To become a Tribunal also, it is not necessary that you should ever have become an Advocate at all. If you are a Tribunal for ten years without being an Advocate, you become qualified. This is no amendment to the original amendment. This is an entirely new thing, it is an absolutely new idea, the original amendment has been completely changed.

We have no quarrel about the jurists, about computing the period of tribunalship also for the purpose of computing the period of advocacy, but what is the basic qualification? The basic qualification must be not a law degree, the basic qualification must be advocateship. From a law degree you branch off to some other area and then you come in. That is how it should be.

The judiciary in this country has its own place. I have no quarrel about taking some people from Government service with special knowledge and all that, but where is the requisite basic knowledge of law, where is the prerequisite about advocacy in a court? Why have you given it up?

Why are we passing this amendment We are passing this Constitutional Amendment for a socio-economic purpose. It is an aspect of the revolutionary change that is taking place that we are doing this. We are going ahead with the overhauling of the Constitution for the purpose of meeting a challenging situation in the country. And an officer sitting somewhere in a department has just managed to smuggle himself into it

[Shri C. M. Stephen]

through this clause. That is what has happened. I have got the strongest objection to this. This is not the purpose for which we are undertaking this Constitutional Amendment. The basic principles have been completely given up and an entirely new amendment has been brought in.

We are going to create many a tribunal with special qualifications in different areas and our concept is that basic knowledge of law is a fundamental requisite for the tribunalship. Without basic knowledge of law, because a person was a tribunal somewhere, can he become a High Court Judge? Merely because he was in the Law department of the Government of India or of a State Government doing some drafting, is he basically qualified for recruitment? This is most objectionable. I have got the strongest reservation about this amendment. This shows the extent to which the persons behind the curtain have entrenched themselves and have managed to see that their interests are safeguarded to the maximum. There is absolutely no necessity for this amendment. I would appeal to the Law Minister to stick to the Clause in the original Bill rather than move this amendment to the original clause.

SHRI DINESH CHANDRA GOSWAMI (Gauhati): I share anxiety of Mr. Stephen at the amendment which the Law Minister has brought forward.

In the Constitution (Amendment) Bill which we have brought forward, we have undoubtedly taken away some jurisdictions of the High Courts, but at the same time, we have taken care to maintain the independence and dignity of the judiciary. This is a vital point from which we have decided not to depart and have no intention to depart. The Swaran Singh Committee has also kept this in view as a fundamental principle that the independence and the integrity of the judiciary should be maintained, but according to this new amendment, anybody from the Government can become a High Court Judge.

It says that a person should have an experience of a tribunal. What does the word "tribunal" here mean? I hope, the Law Minister will explain. Does it mean a constitutional tribunal or any tribunal that the Government may form? We have hundreds of tribunals. The Government may form a tribunal and put in anybody there who has got some experience of any tribunal. But what is more disturbing is that the amended clause empowers Government servants to qualify for judgeship if he has acquired special knowledge of law and legal knowledge over a number of years even though he may not have any recognised legal qualifications. So one who is working with the Minister of Parliamentary Affairs can claim judgeship though he may not have any legal qualifications on the ground that he is dealing with the parliamentary law, and that he has a special knowledge of law and that he has acquired the legal experience. The intention behind the original amendment has been completely taken away and this amendment, I feel, is complete departure from the spirit in which we want the persons to be inducted in judiciary.

In the morning, the Law Minister said that he has an open mind in regard to certain amendments. I would request the hon. Minister to reconsider this amendment because, I feel, this amendment will be thrown at our face saying that the officials are trying in an illegal way to smuggle their own people in judiciary. It is never our intention. I strongly oppose the amendment which the hon. Minister has brought in.

SHRI B. R. SHUKLA (Bahraich): Mr. Chairman, Sir, designedly or due to an oversight, a way is sought to be opened for the induction of persons belonging to the executive side into

judiciary. My submission is that upto this day, before the Independence and after the Independence, this country has adopted a system that judiciary in this country should be manned by persons belonging to the profession of advocates or jurists. Now, a way is sought to be found for appointment of judges to the High Courts and the Supreme Court from the side of the executive. Therefore, I oppose it.

श्री मूल चन्द डागा (पाली): सभापति जी, हिन्दुस्तान में मेरी समझ में आज भी वकीलों की संख्या बढ़ती जाती है। और दूसरी बात यह है कि जो सरकारी नौकरशाही है उसके अन्दर के लोगों को ले कर आप जज बनाना चाहते हैं और न्याय दिलाना चाहते हैं। मेरी राय में तो यह नेचुरल जस्टिस के सिद्धान्त के खिलाफ़ है, और जिस भावना से ले कर आप आये हैं वह समाप्त हो जाएगी। मेरी समझ में नहीं आया कि इस प्रकार के संशोधन से क्या लाभ होगा। जब कोई लीगल नालेज न हो इस प्रकार का कानून लाने से लोगों को आप नुकसान पहुंचायेंगे और जो हम करना चाहते हैं, जो उद्देश्य सामने रख कर इसको लाये है, वह पूरा नहीं होगा।

SHRI B. V. NAIK (Kanara): Mr. Chairman, Sir, I would like to draw the hon. Minister's kind attention to article 50 of the Directive Principles. It says:

> "The State shall take steps to separate the judiciary from the executive in the public services of the State."

I hope, he will be able to clarify that the purpose of the amendment proposed by him does not go against the intent of the Directive Principles which have been raised to a higher level now in the course of this Constitution amendment.

Fortunately or unfortunately, I do not have the instinct of professional self-preservation belonging to the distinguished fraternity of lawyers. But I might only add that if you want to keep your windows open for people with all experiences, ultimately you make way for them. In some of the other democracies of the world, they have elected judges. The judicial offices in some of the countries of the world are held by people with judicial frame of mind, not with judicial technology or the law as such. With reference to the Indian conditions, I might make a submission about the tribunals that are being constituted here. At least in the State from where I come, in every taluk there is a land tribunal where not only the experience in service, etc., is a qualification for that but that he is a voter is also enough. Therefore, it would go against the spirit. I suppose the hon. Minister, when he gives his reply, will be able to tell us (a) whether it is only a constitutional tribunal which is envisaged in this amendment or any tribunal—industrial tribunal or other tribunals that are already in operation and (b) whether he will be in a position to explain this concept of special knowledge in the judicial field requiring special knowledge of law and acquiring legal experience.

SHRI VASANT SATHE (Akola): This matter was discussed and considered at length in the Swaran Singh Committee which was appointed by the Government and it was unanimously of the view that this clause .... (*Interruptions*).

He was a Member but he was not there when we discussed this.

When we discussed this we found that the words "has held judicial office or the office of a Member of a Tribunal or any post under the Union or State Government requiring special knowledge of law" was full of dangerous implications. Art. 217 is dealing with the appointment of High Court Judges; it is not dealing with the appointment of Members of Tribunals. I can understand it if it were a Revenue Tribunal or some Labour Tribu-

[Shri Vasant Sathe]

nal, there can be persons who have knowledge of law and experience and such persons can be taken on the Tribunals. But the moment you talk of the High Court Judges—and now under the new scheme the High Court has to deal with matters relating to Fundamental Rights and the constitutionality of State laws (this is the new power you have provided under 226) and therefore for all appeals from the Civil Courts and Criminal Courts, the High Court will be the repository for reviews. Kindly tell me, does this not require a special knowledge of law—a basic, minimum knowledge of law? The present amendment is worse because it says "has held a judicial office or an office as a Member of a Tribunal or any post under the Union or State requiring special knowledge of law and has acquired legal experience". This is so much unpardonable. Any person, any subordinate office in any Ministry for that matter, dealing with MISA cases, for example, in the Home Ministry can say that he has acquired special knowledge of law as he has been passing so many orders. (*Interruptions*).

I say that a Matriculate or even a non-Matriculate promoted and occupying some Deputy Secretary's post somewhere or even an Under Secretary will be eligible. I would really like you to explain this to the House. We are all Members of the Swaran Singh Committee who have spoken just now and if we feel so strongly about this, you can understand how strongly the others must be feeling.

I would request the hon. Minister to explain this to us. This is one of the items which he will need to consider seriously, under his assurance.

SHRI H. R. GOKHALE: I do not wish to make a long speech, because, the points made in the three or four speeches here, I cannot say are without substance. But one thing I want to clarify, and that is no amendment to the Constitution, much less an amendment of this type, as some Member has said, can be smuggled in. No bureaucrat has, as yet, that pull in the Government that a Constitution Amendment can be smuggled in without its being considered at the highest level. Even I, as a Minister, cannot do on my own. This decision has been taken at the highest level. But at the same time. I would not say that, when points need deep consideration, those points, having been brought to my notice, will not be considered by me. All that I can say is that, just as I have observed in respect of some other Clauses, I am reserving this: I will bring it again to the notice of the Govenment and then we will tell you what should be done about it. More than that, I cannot say anything at the moment.

There were two other points are not connected with this, which were raised. One point was raised by Shri Bibhuti Mishra. That was that a judge should not be appointed in the same State to which he belongs. It is not possible to make a provision very strictly of that nature. It is true that, here and there, occasions arise when it is desirable to transfer judges from the State to which they belong to a High Court of another State. In fact, for the last one year or so, we have been using the provisions of the Constitution for transferring them. We have already transferred about 14 or 15 judges so far. It has been done only in the last one year or so. We were not using that power at all before. We have started using it. It may be that we will be using it in future also. There is enough provision in the Constitution where this thing can be taken care of. But saying that a judge should not be appointed in the same State to which he belongs will create many difficulties. First of all, members of the Bar will not be willing to come forward at all, and we will not be able to recruit proper people for our High Courts.

The point raised by Mr. Abhyankar was about delays. So far as delays is

concerned, that is a problem about whcih all of us are anxious, and I have spoken about it. But what can be done with regard to that in the present Amendment? Nothing can be done by the present Amendment.

SHRI K. NARAYANA RAO: It is one thing to transfer a judge and another thing to appoint a person from another State in the initial stages. That makes all the difference. If the judges who have been appointed once in a particular High Court are transferred to another, they get the feeling that this is being done by way of punishment. The hon. Minister has stated that many people are not willing to go to anothtr State. I do not thnk that that is the correct position. People are prepared to go from one State to another. To avoid heart-burnings at a later stage, I would say, in the initial stage itself, the persons may be appointed to States other than those to which they belong, as we do in the case of IAS, and IPS. There should be no difficulty in that. I would request the Law Minister to think over this.

MR. CHAIRMAN: Clause 37. There is no amendment given notice of. We go to Clause 38.

Clause 38 (*Substitution of new article for article 226. Power of High Courts to issue certain writs.*)

SHRI B. R. SHUKLA: I beg to move:

Page 10, line 24,—

after "redress" *insert* "or prevention" (67).

Page 10, line 29,—

after "redress" *insert* "or prevention" (68).

Page 10, lines 31 and 32,—

after "resulted" *insert*—

"or is likely to result" (69).

Page 10, line 42,—

after "other" *insert* "effective and speedy" (70).

Page 10, line 42,—

after "redress" *insert* "or prevention" (71).

SHRI C. M. STEPHEN: I beg to move:

Page 10, line 24,—

for "injury of a substantial nature" *substitute* "grievance" (123)

Page 10, lines 25 to 28,—

for "other provision of this Constitution or any provision of any enactment or Ordinance or any order, rule, regulation, bye-law or other instrument made thereunder; or"

Substitute—

"provision of this Constitution or of any other law if such contravention has resulted in substantial failure of justice" (124).

Page 10,—

omit lines 29 to 32 (125).

Page 10, line 42,—

for "provided for by or" *substitute* "available" (126).

Page 10, line 43,—

omit "other" (127).

Page 11,—

for lines 17 to 23, *substitute*—

"petition under clause (1) unless the High Court, for reasons to be recorded in writing, is satisfied that there is a *prima facie* case for the petition." (130).

SHRI P. NARASIMHA REDDY: I beg to move:

Page 10, line 42,—

after "any other" *insert* "equally effective" (208).

Page 11, line 10,—

for "fourteen" *substitute* "thirty" (209).

SHRI DINESH CHANDRA GOSWAMI: I beg to move:

Page 10, line 43,—

add at the end—

"and such remedy is exhausted" (434).

SHRI BHOGENDRA JHA (Jainagar): I beg to move:

Page 10, line 24,—

omit "of a substantial nature" (471).

Page 10, lines 31 and 32,—

omit "where such illegality has resulted in substantial failure of justice" (472).

Page 11, lines 11 to 13—

omit "unless the said requirements have been complied with before the expiry of that period and the High Court has continued the operation of the interim order" (473).

SHRI M. C. DAGA: I beg to move:

Page 10, line 42,—

after "other" *insert*—

"efficocious and effective" (597)

SHRI PRIYA RANJAN DAS MUNSI: I beg to move:

Page 11, line 10,—

for "fourteen days" *substitute* "ten days" (598)

Page 11, line 23,—

add at the end—

"or where such order shall have the effect against the share-cropper, cultivator of the vested land" (599).

SHRI BHOGENDRA JHA (Jainagar): Mr. Chairman, Sir, Clause 38 in the Bill is intended to substitute Article 226 of the Constitution. I think, the amendment in the Bill is in the right direction, because we have been facing some troubles on account of the words 'for any other purpose'. Under this category 'for any other purpose', in most of the cases, barring a few exceptions here and there, the power of the High Courts has been exercised in the interest of the vested interests and against the interests of the common people, against issues within the scope of the Directive Principles, against any progressive legislation like land reforms, or even those for the working class and other toiling people. So far so good. But, Sir, we also know that these amendments are subject to the provisions of Article 131A and Article 226A. There, we know, the central laws are taken away from the purview of the High Courts, even if they affect the people of the State or the area under the jurisdiction of the High Court. There, it will create another difficulty Certain sections of the people may find it easier to approach the High Court from the financial point of view, but they may find it much more difficult to approach the Supreme Court, because it would be more expensive. This provision will, therefore, go against the interest of the common people. In any case, the vested interests will directly approach the Supreme Court; they will not be prevented from it. The amendments, that I have moved, namely amendments No. 471, 472 and 473 are to the extent that the High Courts are sought to be given the power to intervene in issuing orders or writs, in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari*, or any

of them. Here, the provision is for the enforcement of any of the rights conferred by the provisions of Part III. Again in Part III, we are leaving untouched the fundamental right to property, trade or business. Apart from that, it is immoral, because no property rights would be fundamental, only human rights can be fundamental. Ours is perhaps an exceptional constitution even taking into account the Constitutions of the capitalist world. We are granting this fundamental right to property over the human rights. Here again, through this amending Bill, we are trying to give precedence to Directive Principles, but that will have to be decided by the judiciary. The propertied class will be in a position to spend sufficient amount to engage the best talent in the country and the best advocates to ensure that their interests are not touched and the courts intervene in their favour. That again is left undefined here. So the floodgates of such litigation in the interests of the vested interests are left open. That again is a very dangerous thing because if we had deleted that in at least 19(f) and 19(g), in that case, it would have been all right but when we leave them intact, this is a dangerous thing which we are leaving here. Again we will face troubles with regard to the progressive legislation in various States of the country. To the extent the High Courts are allowed, these things will again arise, for you say in (b):

> "for the redress of any injury of a substantial nature...."

and again "where such illegality has resulted in substantial failure of justice." 'resulted in any injury of a substantial nature' and 'where such illegality has resulted in substantial failure of justice'—these are so vague. Who will define it? Then in (5) it is said: 'The High Court may dispense with the requirements of sub-clauses (a) and (b) and make an interim order...for preventing any loss being caused to the petitioner which cannot be adequately compensated in money. ...' But with regard to poor sections of the community or where the civil liberties are concerned or the fundamental rights are concerned, it cannot be presumed to be compensated in terms of money. So, the High Court cannot intervene. So this clause again works in the interests of the propertied class and against the interests of the common people and against the interests of the progressive legislation in various States. I think the Government should again consider this as Mr. Gokhale has said on several occasions that some aspects he will reconsider. I think otherwise these amendments will be self-defeating.

Similarly, take my amendment No. 473. The question is that the High Court in certain cases can be allowed to issue *ex parte* stay orders for 14 days. But there is a provision here: 'shall, if it is not vacated earlier, cease to have effect on the expiry of a period of fourteen days....unless the said requirements have been complied with before the expiry of that period and the High Court has continued the operation of the interim order.' Unless the High Court continued the operation of the interim order, this will lapse. But if the High Court continues as it may think that it can be compensated in terms of money, in that case, it will be again endless stay orders. So, my amendment 473 seeks to delete that part:

> "unless the said requirements have been complied with before the expiry of that period and the High Court has continued the operation of the interim order".

There are several instances. I was myself involved in one case. It was a case of share-croppers in the Patna High Court. The High Court decided favourably. After hearing, the Revenue Department granted the *pattas* and after prolonged hearing, permitted the harvesting also. Then on some frivolous ground a stay order was given with regard to the paddy harvest which legally belonged to the share-croppers. An order of loot was

[Shri Bhogendra Jha]

given by the High Court because they belonged to the propertied classes. I have been pleading in the High Court and I may be charged with contempt of court for using that expression 'order of loot was given by the High Court'.

So, Sir, in such a situation we will face such problems because the objects and reasons say that these amendments are intended to clear the path towards a socio-economic transformation. I am not here tempted to use that expression....

MR. CHAIRMAN: Why not?

SHRI BHOGENDRA JHA: I hope so but in the present set up and in the present frame-work of the amending Bill that is not possible....

MR. CHAIRMAN: The Law Minister said it.

SHRI BHOGENDRA JHA: That may be good intentions but unless those wishes are translated into action, these amendments cannot help. I hope the Minister will have the courage to do so. In such a situation, to have the socio-economic reform, I may plead with him that he may seriously consider my amendments No. 471, 472 and 473. He may see that his amendment is made less inconsistent if not fully more consistent.

SHRI B. R. SHUKLA (Bahraich): The present amendment to Article 226 has been very carefully made. It tried to meet the difficulties of the citizens against the wrong acts of the executive and at the same time it also takes note of the problem of the administration.

My amendments are somewhat formal in character. First, I have sought by my amendment—insertion of the word "prevention" after the word 'redress'. The word 'redress' appears to connote that some injury has been done and it is to be repaired, while the word "prevention" relates to the injury likely to happen by the action which is the result of the contravention of some law or rule. Therefore, mere use of word 'redress' may not be adequate to meet the situation created by the contravention of an order or law which has not actually resulted in any substantial injury but is likely to result in substantial injury. Therefore, after the word 'redress' the word "prevention" should be added and where it has been provided that injury has resulted, it should also be added 'where the injury is likely to result'. This is the first part of my amendment.

Under the existing Civil Procedure Code and also Criminal Procedure Code there are normal remedies available to a citizen. But, you being well versed in law know that these common law remedies in Civil and Criminal Courts are pro-tracted. Justice delayed is justice denied. This jurisdiction under Article 226 is a salutary provision. The jurisdiction for the writ has been kept intact and its scope has been clarified. At the same time a proviso has been added to the exercise of this jurisdiction—'if other remedies are available, writ will not lie'. The word 'other remedies' should be replaced by 'other speedy and effective remedies'. The existence of other remedy which has been available since the time of the Britishers in this country will not meet the ends of justice and the excesses of bureaucracy and their vagaries cannot be curtailed under Article 226 unless its scope is extended to all cases where effective and speedy remedy is not available.

SHRI C. M. STEPHEN: Sir, this is one of the most vital sections in this Constitution Amendment Bill regarding Article 226. As my learned friend Shuklaji said by and large this proposal will certainly be welcomed. I have some amendments to make on this. One is this. In sub-clause (b) a new concept has been brought in. The change we have effected is this. Formerly it was for the purpose of

Part III or other purposes. We have now taken away the words 'for other purposes'. In place of that what we have done is this. We have introduced the concept of Pandit Jawaharlal Nehru's committee so many years back. On those lines the Swaran Singh Committee made recommendations. But it is written in a different way altogether, which will create complications. They say 'for the redress of any injury of a substantial nature'. The other one is saying 'illegality which has resulted in substantial failure of justice'. What the Nehru Committee said was 'failure of justice' not injury or substantial injury and all that.

May I ask you what do you mean by substantial injury? What may be substantial injury for one person may not be the substantial injury for some other person. Tatas or Birlas may not mind about Rs. 4 lakhs or Rs. 5 lakhs; it is not a substantial injury for them. But even Rs. 5,000 may be a substantial injury for a poor man. Here what we are concerned with is not substantial injury and so on. We are concerned about the violation or the deviation of justice or aberration of justice. But it must be a substantial aberration of justice. Those concepts are taken care of in sub-clause (c). But in sub-clause (b) there is this concept. Sub-clause (b) relates with the concept of violation of any Act. Sub-clause (c) relates with violation of any procedure. This is about violation of procedure. Substantial injury is not asked for. Substantial failure of justice is what is required in the other case. Here, substantial failure of justice is not what is insisted upon, but substantial injury is the thing which is insisted upon.

I cannot understand why this should be so. When you violate a law, when you violate the provision of the constitution etc., which results in injustice, if that injustice is of a substantial character, this extraordinary remedy must be available. You need not go and measure up those injuries. It is an immeasurable thing. So, what I say is, we are injecting some different concepts into this. What Nehru Committee proposed was this. They had no idea about injury or about substantial injury. That is why I have proposed these amendments. What I have suggested is that in place of 'injury of a substantial nature' we may say 'grievance'. The grievance may be accepted. We are out to redress grievances of citizens. This is one point.

The most objectionable part is about sub-clause (3). It says that no petition for the redress of any injury referred to in subclause (b) or subclause (c) of clause (1) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force.

Now, Sir, I come with a complaint that my right is violated under a particular Act. Two concepts are imported into it. If I have a remedy in any other law, it means, this remedy will not be available to me here.

I would submit that a civil suit is available to any citizen. The civil suit can be another remedy. And, on that basis, it is possible that this remedy can be refused to me. It is possible that it may be refused to me. Again, there may be a provision that I can go to the Secretary of the Government or some higher official and, if that remedy is provided, it will be only an imaginary remedy—an illusory remedy—and, on the basis of that remedy, this remedy can be refused to me. I am coming to the implications of it. There is the other law to which also I shall be coming.

If a remedy is provided for in the law under which you are complaining, then you cannot have the remedy under Art. 226. Even if a remedy is available in any other law, it is not necessary that it must be an efficacious remedy. In effect all that is necessary is this. If any other remedy is provided in any other law

[Shri C. M. Stephen]

and that law is for the redressal of the grievance, then Art. 226 will not be available to me. I would rather scrap Art. 226 because it is not likely that anybody will get the remedy out of that. With this proviso, I do not think any one is likely to get any relief under Art. 226. Therefore, I have suggested my amendment. The point made is that the remedy available to me must be an equally efficacious remedy; and, if an efficacious remedy is available to me, then remedy under Art. 226 can be refused to me. To refuse that is to scrap Article 226. Instead of providing the word "provided" the word "available" would have been better. The point that I am making is this. This is completely nugatory. The relief that is proposed to be given under Article 226 is negatived by this sub-clause.

Therefore it is very earnestly urged that my amendment might kindly be considered by the hon. Minister. Sub-clause (6) says that no interim order will be made which will have the effect of delaying any inquiry into a matter of public importance or any investigation or inquiry into an offence punishable with imprinsonment or any action for the execution of any work or project of public utility, or the acquisition of any property etc., etc....

That sort of provision may be necessary. But, should there be such a blanket provision? My proposal is that this provision may be retained subject to one condition that if the court, for reasons recorded in writing, is satisfied that there is a *prima facie* case for the petition, then an interim order may be issued.

There will be three types of cases—(a) no interim order will be issued without hearing; (b) interim order, *ex parte*, can be issued in exceptional circumstances where compensation in money is not possible; and (c) no interim order will be issued unless the court, after hearing, is satisfied that there is a *prima facie* case on the basis of which only the interim order is asked for. If that provision is to be put in, then I think, this *ad hoc* interim order can be avoided and the grievances of the citizens can also be avoided against the official's actions which can go the wrong way.

Some relief must be available to citizens. We have got the Court and let them issue the interim order if there is a *prima facie* case for the petition. Then, the court has to give an interim relief. These are the three proposals I am making and I would request the hon. Minister to kindly consider these proposals.

SHRI DINESH CHANDRA GOSWAMI: This article is one of the most important articles that we are debating. In fact, in the entire constitutional debate, this has been one of the main bones of contention. We know that article 226 has created a lot of confusion in the judicial history of this country and has come in the way of many socio-economic programmes. We know that the courts exceeded their jurisdiction many a time taking cover of the clause 'any other purpose'. The Law Minister referred to certain cases. We know of a case also where, I am told, even the transfer of a person from one ward to another in the same hospital was stayed under the provisions of art. 226. Therefore, it is in the fitness of things that this article should be reframed to really give expression to what we have in mind so that it may not come as a bar to socio-economic progress.

The Swaran Singh Committee had also discussed this article in various stages. In the first stage, when we submitted the report, we decided to delete 'any other purpose', whereby the implication was that a person would be entitled to go under art. 226 for the enforcement of fundamental rights alone. But after the Committee took views of the High Court Bar Associations and other persons, it was thought that relief should also be given under 226 in case of appropriate

cases of contravention of the provisions of the Constitution or where there is bureaucratic abuse of statutory provisions, that is, if under any other provision of an enactment or Ordinance injury of a substantial nature is caused.

Therefore, the purpose of article 226, if I have been able to understand it aright, is to give to persons a forum whenever there is violation of a fundamental right and secondly, whenever there is contravention of any other provision of the Constitution or some statutory provision. Again this has been limited to this extent, that in case tribunals are constituted and the forum is shifted to tribunals, notwithstanding article 226, this right will not be available.

But looking to the clause as it has been drafted, I am in a great deal of confusion. I feel that in no case will a person be entitled to go under art. 226 even if there be a contravention of a provision of the Constitution or any other provision of an enactment or Ordinance. The reason is simple. We have said in clause 3:

> "No petition for the redress of any injury referred to in sub-clause (b) or sub-clause (c) shall be entertained if any other remedy for such redress is provided...."

Now in my respectful submission, a civil suit, a suit under the provisions of the Civil Procedure Code, is also an alternative remedy. I would like to know from the hon. Law Minister whether he concedes this position. It may not be an efficacious remedy, but it is an alternative remedy. If this is an alternative remedy, then in every case a person has the right to go in a civil suit except in some cases where by statute civil proceedings are barred. Therefore, except in those cases where civil proceedings are barred, because an alternative remedy of civil suit is available, article 226 is not available. In those cases where we have barred civil proceedings, our intention is barring them is not to give jurisdiction under article 226 also. At least I am not prepared to give that jurisdiction to the High Court when we have decided to take away that jurisdiction and have decided to give it to a particular forum. Therefore, if that position is accepted, I do not think in a single case where a person, even though there is gross violation of the provisions of the Constitution or some enactment, will be entitled to go under art. 226. If the Swaran Singh Committee's recommendation has been accepted by Government, than the stand of Government should be reflected in clear terms. If Government feel that article 226 should be confined only for the enforcement of fundamental rights and not for contravention of the other provisions of the Constitution and statutory provisions; then the clause should be redrafted but in no case should the right be merely illusory. The right should not be given by one hand and taken away by the other. I feel that sub-clause (3) as it stands will absolutely come in the way of the enforcement of art. 226.

Therefore, I would like the Law Minister to reconsider this position. Or make it clear in terms that civil suit is not an alternative remedy. Otherwise, what will happen is that in every case that comes, the High Court, in order to give a proper interpretation of art. 226, will say that it cannot be the intention of the legislature to give something by one hand and take it away by the other, and will start interpreting the same thing, and again the same process of amending art. 226 shall have to start within a month of the passing of this provision.

17.00 hrs.

We have made a provision in sub-clause 6, not to grant stay in some cases; for example when the stay order will have the effect of delaying any inquiry into a matter of public importance or any investigation or inquiry into an offence punishable with imprisonment for any action for

[Shri Dinesh Chandra Goswami]

the execution of any work or project by a public corporation. Coming to the last category, if a public corporation passes an order and says: we are doing it for the execution of our work, however much it might affect the rights of a citizen, the courts will have no power to grant stay. I am not in favour of giving such wide power. Sufficient safeguards have been provided against abuse of State. Let us provide more safeguards. But a very wide clause like this has got the potential of creating many difficulties for genuine people. Therefore, the hon. Minister should look into it.

There is another provision to which I want to draw the attention of the hon. Minister, that is article 58. I am referring to sub-clause (b). In the case of pending petitions, you have said that on the expiry of a period of four months from the appointed day, if the copies referred to in clause (a) have been furnished to such party but such party has not been given an opportunity to be heard in the matter before the expiry of the said period of four months; stay will be vacated. There will be thousands of pending cases before the High Courts. In a case, where the high court could not list the case for hearing; the other party could not be given an opportunity of being heard and therefore that party suffers merely because the High Court could not give to the other side an opportunity of being heard—Is it the intention of this clause? I hope the hon. Law Minister will keep this in view and try to clarify the position and redraft the entire clause so that the intention we have is achieved. Otherwise, we find that article 226 as it has been drafted today becomes more complicated than it was.

SHRI P. NARASIMHA REDDY (Chittoor): I entirely agree with the arguments advanced by Mr. Stephen and Mr. Goswami that this new article 226 needs material amendments Sub-clause 3 says that if any other remedy is there, no petition would be entertained. The other day the hon. Minister replied to the discussion and said that it was not the intention to take away any of the legitimate remedies available to *bona fide* affected persons. Sub-clause 3 is mainly intended to restrict frivolous resort to High Court; it is a restrictive clause. We quite welcome the safeguards that had been provided; one safeguard is for the enforcement of Fundamental Rights, secondly, if there is substantial injury, a writ can be entertained; thirdly if there is substantial failure of justice then a petition can be entertained. But why should you deprive a poor affected party from the benefit of this article merely because there is supposed to be an alternative remedy? There is no wrong without a remedy. That is the axiom in law. But all remedies are not effective, or equally effective. By denying this facility to the litigant, we will unnecessary be creating a hardship which is not at all the intention of the government, or of the Law Minister. It is the right of any citizen to choose whichever remedy is cheaper, speedier or more easily accessible. Why do you restrict that he should not choose one remedy, but should choose the other? For example, from Delhi to my place, Madras, I go *via* Nagpur. You say that if there are alternative routes available, I should not go by that route. There are routes available *via* Bombay and *via* Calcutta. It would amount to such a sort of imposition which is not at all, I think, intended by the Law Minister Therefore I would suggest that we should not, in our anxiety to reform or restrict the jurisdiction of the court under this Article, throw away the good along with the bad. It is like throwing away the baby along with the bath-water. This requires re-consideration. Many jurists and legal experts who have given their opinions earlier, have said that it would be like administering antibiotics to cure a disease which kills both good and bad bacteria and thus

leaves behind unmanageable toxic reaction. It would have the same reaction here if this clause is there—though it appears to be innocuous it would virtually take away the rights, the legitimate rights of even the genuinely *bona fide* affected persons.

17.07 hrs.

[SHRI C. M. STEPHEN *in the Chair*]

My other amendment to this clause relates to the interim order. The interim order of stay or injunction is also subjected to severe restrictions. It is welcome. This restriction is necessary, because everyone knows, that, as the Law Minister said the other day, that recovers had to this Article, not merely because ultimately the petitioner would succeed and the judgement would be favourable. This is restricted; it is good. This is resorted to because interim orders can be had for the asking, like platform tickets. But in restricting it, you say that where there is an irreparable damage—a damage which cannot be compensated by money, as under (b) and (c) of the previous sub-clause—an interim order can be issued; the stay or injunction can be granted, but it is qualified. If the other conditions *viz.* serving of the notices, documents etc. on the respondent and giving an opportunity for the respondent to be heard are not fulfilled within 14 days, this interim order can be get vacated. It is not in the hands of this poor petitioner to provide an opportunity for the respondent. The onus is on the High Court. If the High Court finds that it is not able to provide an opportunity for the respondent within 14 days, should this poor petitioner suffer? This question needs a second look. That is why my amendment says that 14 days is not enough. It needs 30 days. That too may not be enough. This requires the sympathetic consideration of the Law Minister.

श्री मूल चन्द डागा : सभापति महोदय, बात यह है कि न्याय के दरवाजे बन्द नहीं होने चाहिये। इस सम्बन्ध में श्री एच० आर० गोखले साहब ने खुद लिखा है :

"Our Constitution has enabled a single individual to stand up against the entire State or even the entire nation, if his fundamental right has been threatened; and the courts when convinced of the justice of his cause have upheld his stand. It must be said to the credit of the Governments both in the States and at the Centre, that they have, always and without exception, bowed down to the decisions of the courts and carried them out readily and willingly."

यह गोखले साहब ने खुद लिखा है . . . (व्यवधान) . . मैं डिफेंस मिनिस्टर साहब से अर्ज करूंगा कि मंत्री महोदय को थोड़ा हमारी तरफ ध्यान देने दें।

I am quoting your own sentences. Therefore, I want to draw your attention to the quotation.

श्री एच० आर० गोखले : जरूर कोट कीजिये और आप जो कह रहे हैं उसके बारे में ही मैं सोच रहा हूं।

श्री मूल चन्द डागा : मैंने इसमें यह अमेंडमेंट दिया है कि न्याय सस्ता, सुगम और शीघ्र मिलना चाहिये—एक्सिकेशस ऐंड एफ़ेक्टिव।

यह सुप्रीम कोर्ट की और कई कोर्टस की रूलिंग है :

"Where there was a complete lack of jurisdiction in the officer or authority to take the action impugned, *e.g.* where the proceedings have been taken under a law which is *ultra vires*.

श्री मूल चन्द डागा :

Where the impugned order has been made in violation of the priciples of natural justice.

"(iii) Where the right to obtain the statutory remedy has been lost or barred by no fault of the Petitioner.

(iv) Where it is evident from the acts of the statutory appellate or revisional authority that it would be futile to approach him for revising the impugned order.

(v) Where quick relief is necessary."

तब तो फ़िर मेरे ख्याल से हमारे साथ न्याय नहीं होगा। यह न्याय का तरीका नहीं है। यहां पर आपने कर दिया है :

"No petition... shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force."

But if no effective remedy is available, what will happen to them?

मेरा कहना है अगर आप इस कानून को इसी तरह से रखेंगे तो न्याय नहीं मिल पायेगा। कानून का सबसे बड़ा काम है, संविधान की सबसे बड़ी प्रस्तावना मे यह है और संविधान का उद्देश्य यह है कि न्याय सुलभ हो इसलिये न्याय के दरवाजे बन्द करने का दोष आप अपने ऊपर मत लीजिये। अगर कोई भी व्यक्ति सही और सुगम न्याय लेना चाहता है तो मेहरबानी करके उसे वहां जाने दीजिये। इस प्रकार तो उस पर रोक हो जाएगी। आपने लिख दिया

He must have furnished the copies.

मुझे दावा करना है तो दावा करते समय कैसे हो सकता है कि कोई गवर्नमेंट सरवेन्ट है या कोई एम्प्लाई है उसको आप कापी फर्निश कर दें, मैं तो इंजक्शन लेना चाहता हूं।"

I want an injunction. I want to maintain the status quo, but I cannot,

आपने लिखा है कि जब तक दूसरे को कापी न दे दें तो यह कोई मेरे हाथ की बात नहीं है, मान लीजिये कोई आदमी पंजाब में है और मैं जोधपुर हाई कोर्ट में सूट फ़ाइल करना चाहता हूं तो आप कहेंगे कापी दो, इससे तो कोई फ़ायदा नहीं है। कोई आदमी परमानेन्ट इंजक्शन चाहता है, स्टैटस-को के लिये जाता है तो उसको देना चाहिये। मैं समझता हूं कि इस पर आप विचार करेंगे।

SHRI PRIYA RANJAN DAS MUNSI (Calcutta—South): My amendment is very simple and if the hon. Minister accepts it, it will help all of us and the country.

First of all, I think that the scope of article 226 is very limited, and I would have been extremely happy if it had been completely wiped out, because I have seen in the history of independent India that this particular weapon has been used against all the socio-economic programmes of the country.

By intelligently applying his wisdom, the Law Minister, to whom we are all grateful, is trying to preserve and incorporate a few of the things which are essential and remove others which have proved hurdles in the past, for instance in the way of acquisition of property for projects of public utility, etc. In the last two decades, various programme were introduced by Pandit Jawaharlal Nehru and our presnt Prime Minister, Shrimati Indira Gandhi, which vested interests have tried to obstruct by taking recourse to article 226. The whole nation would, therefore, be grateful to Shrimati Indira Gandhi for introducing such an important and genuinely revolutionary concept in this Constitution. I would only appeal to the hon. Law Minister and the hon. Members of the House having faith in democracy to help the judiciary play its role in achieving our socio-economic changes. That being so, you must be specific in your provi-

sion as to for whom you would like to give relief in this measure.

As my hon. friend, Shri Bhogendra Jha, stated, in the last two years, in the High Court, I have seen with my own experience the application of article 226. It is true that it created a problem for the Government. A large number of poor people of the country who were in the rice-eating belt during the British time in the coastal area of Andhra Pradesh, Bengal, Bihar and Orissa were under the *ryotwari* system and the people in one part of the southern India and in one part of the northern India were under the *malguzari* system. As a result of that, what happened was that the peasantry belonging to the *ryotwari* system had to depend mostly on the zamindars and the big landlords whereas in the southern part of the country and the northern part of the country, there was a sort of the feeling of collective bargaining. So, what happened was that in the course of applying article 226, mostly, the sufferings were cause to share-croppers and the cultivators in the areas where the *ryotwari* system was prevalent. That happened in the jurisdiction of the Calcutta High Court, in Gauhati and in Andhra Pradesh also. If you will see, the Naxalite movement and agitation did start from the coastal belt of Andhra Pradesh upto the area where the *ryotwari* system was there.

You have rightly said:

> "no interim order shall be made on, or in any proceedings relating to, a petition under clause (1) where such order will have the effect of delaying any inquiry into a matter of public importance or any investigation or enquiry into an offence punishable with imprisonment or any action for the execution of any work or project of public utility, or the acquisition of any property for such execution..."

Everything is good. I would like you to add:

> "or where such order shall have the effect against the shore-croppers and the cultivators of land."

If you do not do it, the High Court judges will give different interpretations and, while they will give different interpretations, an interim order which they used to get earlier will continue to get as a result of which, frankly speaking, you will not be able to protect the large number of poor peasants, the shore-croppers and all that.

MR. CHAIRMAN: The clause says that tribunals will take care of that.

SHRI PRIYA RANJAN DAS MUNSI: That also is a matter of delaying process. They will not get immediate relief.

My second submission is this. It is provided:

> "...if it is not vacated earlier, cease to have effect on the expiry of a period of fourteen days."

Some Members suggested that it should be 30 days. I am not for that view. It is too long a period. In a large number of cases, the people who will get the benefit of the interim order will not be the poor people. You make it 10 days. That is moderate. You make it 10 days, not 15 days.

SHRI VASANT SATHE: Sir, I want to make two important submissions in this regard.

Day before yesterday, the Prime Minister while intervening in the debate made a categorical statement that the Government has absolutely no intention of curbing the rights of individuals. Probably, she was having in mind a charge that was being made by the Opposition that now article 226 goes, the High Court powers go and there will be no relief given to the people. I think, it is in that context that a categorical statement was made. If you recall, the Nehru Committee had said that the words "any other purpose" should be removed. But in the same sentence, it also said that a provision should be made for redress in a matter where substantial failure of justice

[Shri Vasant Sathe]

has resulted. So, you cannot take the Nehru Report and take one sentence out of context 'any other purpose' for being removed and leave the rest. By removing 'any other purpose' the mischief we wanted to prevent was this: The High Court had opened a floodgate, as it were, for admitting all and any petitions against Government action and was allowing the matter to be kept pending for years together till the final thing was decided, in the garb of 'any other purpose'. It is in fact under 'any other purpose' that the High Courts and the Supreme Court had given various decisions. That is how the matter came in. Otherwise, if you remove 'any other purpose' a civil suit will become an alternative remedy. Therefore, now that we have redrafted it and we are doing it in the spirit of the Nehru Report, the Law Minister has provided specifically (a) for the enforcement of rights conferred by the provisions of Part i.e., Fundamental Rights and (b) and (c) for the redress of any injury of a substantial nature. While supporting your contention (I don't want to go into the niceties of it), supposing a man goes to the High Court and satisfies the High Court that here is a case where injury of a substantial nature is likely to be caused or has been caused by the action of some official of the Government, what will happen? If the High Court is satisfied that there is a thrent of injury or actual injury is there, by reason of a contravention of any of the provisions of the Constitution or an enactment or law or by-law, what will happen? Where will we go? Because, what we are ensuring and assuring under the assurance given even by the Prime Minister the other day is that we are taking away, without probably intending to do so, by (3)— because the wordings of 3) are that "no petition for the redress of any injury referred to in sub-clause (b) or (c) of Clause (1) shall be entertained" (it is mandatory) "if any other remedy for such redress is provided for by or under any other law for the time being in force" (*Interruptions*).

Another thing is that you have other laws in which you have made a provision that the Tahsildar, under land legislation, will be the first Appellate Court and writ petitions will lie to the Tahsildar. If a poor man wants to be given surplus land and some authority takes it away, what will happen? Where will he go? He cannot go to the High Court even if there is substantial injury because you will say that other remedies are provided for.

Under the Food Adulteration Act, if an Inspector goes to a petty shop-keeper and says 'I have found that in this oil there is adulteration and I am going to confiscate all this unless you give me Rs. 5,000', redress is provided for through a Food Officer who is also hand-in-glove with him. So, even that remedy—the 'other remedy'—goes and the man cannot go to the High Court even if there is substantial injury. What will happen? We will let loose,—I am finding so many things; I am going to point them out presently—I am afraid, a tyranny of bureaucracy in this country. As it is, we know what some of the bureaucrats are doing in this country and how they are spoiling the name of the Party by their acts of omission and commission. What will happen later if this remedy also goes away? I want to go on record saying this that this was the unanimous view of the Swaran Singh Committee on this provision, and we had sent it I would plead with the Law Minister to give consideration to this

Regarding sub-clause (6), kindly see the wording:

> "....no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, a petition under clause (1)..... or any action for the execution of any work or project of public utility, or the acquisition of any property for such execution, by the Government or any corporation owned or controlled by the Government."

Any corporation! Suppose, they say that they want to build some road

somewhere and your house comes in the way. They are going to send a bull-dozer on it, because, it is in the process of execution of a project of public utility. The poor fellow will not have any remedy. No stay can be granted. The damage will be done. After that, what are you going to do? Even if the matter is decided in the High Court in his favour, what relief will he get? The damage will have been done. Therefore, such a preempting thing should not be there. It will be a bad law. Enough safeguards are already there: indefinite stay cannot be given; then the person has to satisfy that the injury is of a substantial nature, as you have explained the other day,—merely on a technical ground he cannot come. Therefore, with all these safeguards, let us not take away this remedy. What I would plead with the Law Minister is this. You can say 'efficacious remedy'—'efficacious' is one which will achieve the desired results. Or, you may add both 'efficacious and effective', and clear this matter.

श्री इसहाक सम्भली (अमरोहा) चेयरमैन साहब, क्लाज 38 में जो स्टे आर्डर देने के लिये रोका गया है उस पर कामरेड भोगेन्द्र झा बोल चुके हैं, मैं तफ़सील में नहीं जाऊंगा, सिर्फ़ एक चीज की तरफ़ आप की तवज्जह दिलाना चाहूंगा । जहां यह किया गया है कि पब्लिक यूटिलिटी के कामों के लिये हाई कोर्ट्स को बार किया गया है कि वह स्टे आर्डर न दे सकें, मेरी दरख्वास्त है कि पब्लिक यूटिलिटी के कामों के लिये जो बैन लगाया बहुत अच्छा किया, लेकिन जरूरत इस बात की है कि डाइरेक्टिव प्रिन्सिपल्स के इम्प्लीमेंटेशन के लिये भी अगर आज कोई कदम उठायें उसको भी वह न रोक सकें, यह इस में होना चाहिये । आपको मालूम है कि बम्बई हाई कोर्ट ने जो सूदखोरों के खिलाफ़ आप ने वहां कानून बनाया था उस पर स्टे आर्डर कर दिया । इसी तरह कलकत्ता हाई कोर्ट ने पैडी लैवी के खिलाफ़ स्टे आर्डर दे दिया, और पंजाब हाई कोर्ट ने तो कमाल ही किया है । उन्होंने तो जो फ़ैमिली की डेफ़ीनिशन की गई थी । लैण्ड सीलिंग ऐक्ट में उसके खिलाफ यह कह कर स्टे आर्डर दे दिया कि फ़ैमिली में 18 साल का बालिग माना गया है । लेकिन उन्होंने 16 साल वाले को भी मान लिया यह कह कर कि दो साल बाद यह भी बालिग हो जाएगा । इसलिये उन्होंने लैण्ड सीलिंग ऐक्ट के खिलाफ़ स्टे आर्डर दे दिया । इसी तरह से माइनारिटीज के लिये आपको कदम उठाने होंगे, जैसा कि डाइरेक्टिव प्रिन्सिपल में दिया गया है । इसलिये जरूरी है कि उन चीजों के लिये भी इस में बार होना चाहिये । वरना अगर डाइरेक्टिव प्रिन्सिपल्स को इसमें शामिल नहीं किया गया तो जो आप का मंशा है वह पूरा नहीं हो सकेगा ।

इसलिये मैं दरख्वास्त करूंगा कि यह मौका दीजिये वरना जो हाई कोर्ट हैं, जैसा कि कल कांग्रेस मेम्बर ने कहा था, उनमें जिस तरह की फ़ैमिलीज से और सैंक्शन्ज से लोग आते है, हमे उम्मीद नहीं है कि वह पूअर पीपल के साथ इन्साफ़ करेंगे । इसलिये मेहरबानी कर के डायरेक्टिव प्रिन्सिपल्ज में इसको शामिल किया जाये ।

SHRI H. R GOKHALE: Mr. Chairman, Sir, indeed, it has been a very interesting and useful discussion and I would not go into each different point raised here, I would rather particularly differentiate between a point which is made, and which I am not inclined to accept, and a point, which I would not say, I am inclined, but I would say, that it does require consideration.

First of all, I would deal with the scheme of Article 226, not the whole of it, but those parts to which a reference has been made. The first reference was to the very first clause of the proposed Article 226; Clause (1). There also, part (b) and (c) were touched and there was no comment on ,a(and I suppose, there is no dispute with regard to part (a).

[Shri H. R. Gokhale]

Before I deal with part (b) and (c), I want to point out that a reference was made to the report of the Swaran Singh Committee. Indeed, the Swaran Singh Committee had recommended that the words 'any other purpose' should be removed and they had not made a recommendation in the form in which the two clauses are before the House. But, obviously, the intention of the Swaran Singh Committee was not to leave a citizen without redress altogether. Now, they had said, 'substantial failure of justice.' We know and, in any case, the lawyers must know that the words 'substantial failure of justice' have been amply and many times interpreted by the Supreme Court and it finds place in some other enactments like the Criminal Procedure Code. Substantial failure of justice has been interpreted to have a reference to something where there has already been a judicial or a quasi-judicial determination of a question.

17.32 hrs.

[SHRI ISHAQUE SAMBHALI *in the Chair*]

Therefore, the conclusion that you can go into a matter only if there is a substantial failure of justice cannot apply in respect of a matter where injury is caused, but is not the result of a judicial or quasi-judicial determination. Therefore, it was necessary in order to see that the purpose of the recommendations of the Swaran Singh Committee is not defeated to make two clauses, first to deal with actions or omissions against which a complaint is made, but which is not the result of a judicial or a quasi-judicial determination and that is taken care of in clause (b); and then in matters in which there has been a judicial or quasi-judicial determination, that is taken care of in clause (c).

So far as clause (b) is concerned, even the words 'substantial injury' have been interpreted several times by the Supreme Court and for the very argument that if you do not define, what is an injury, it might mean that it will change with the foot of the Chancellor, it is necessary not to define that. Substantial injury will be, in the first part, dependent on the nature of the injury complained of. It does not mean that substantial is to be evaluated only in terms of monetary value; we are not talking of monetary value at all. It is an injury, which may be of money, or may be of any other type. In relation to me, it may become very substantial, but that very same injury may not be so substantial in the case of some other person, for whom for example, ten thousand or fifteen thousand rupees is nothing. That is quite true. Therefore, whether or not an injury is substantial is to be determined in the background of the nature of the complaint made and the facts of that particular case. You cannot out it in a rigid formula apart from the fact that this has been interpreted several times. But kindly consider this that in both the clauses it is not a blanket provision. Now, look at clause (b) where you say 'for the redress of any injury of a substantial nature'. 'any injury of a substantial nature'...

SHRI C. M STAPHEN: 'substantial' is there.

SHRI H. R GOKHALE: Yes, it is there. Just not any injury but 'injury of a substantial nature'. Again, what is 'substantial' or not, any judicial man will have to consider whether it is 'substantial' or not, depending upon the person who is coming to make the complaint, the nature of the grievance and the injury complained of. Then, 'substantial failure of justice' or 'failure of justice' has been interpreted to mean so as to have reference to something which is caused as a result of a judicial or quasi-judicial determination. Therefore, you have to take into account injury caused by judicial or quasi-judicial determination or injury caused by executive action. That is why the two clauses.

Then 'injury caused by contravention of any other provision of this Constitution.....' etc. Therefore, even

if there is an injury and there is no contravention of any provision of the Constitution...etc., that is no ground. or contravention of any provision of my enactment or ordinance or any rule, order, rule, regulation, bye-law or other instrument made thereunder'— therefore, a litigant can come to the court and say, 'Here is an injury which is caused to me which is of a substantial nature'. It is caused to me (1) because there is a violation of the Constitution, (2) because there is a violation of a law or rule or bye-law or something like that. Therefore, it is restricted by both, that you cannot come with any grievance unless you complain that there is an illegality and that illegality has caused you an injury of a substantial nature. Now, the reason for it was this and there we go to the technical redressal of grievances because the illegality can be technical also. For example, there is a provision—I think the other day I mentioned it—that you have to give 14 days' notice. If the notice actually given is 13 days, then there is a violation of the rule or bye-law. But, if as a result of the violation, the court comes to the conclusion that no injury has been caused of a substantial nature by this notice being short by one day, they may say, 'You are asking us to do something merely on a technical ground. Such a redress cannot be given." That is the purpose of this clause (b).

Then clause (c) says:

> "for the redress of any injury by reason of any illegality in any possible proceedings by or before any authority under any provision referred to in sub-clause (b) where such illegality has resulted in substantial failure of justice."

Now, here, even if it is an order, it has reference to clause (b) but if it is a determination by an authority constituted under a law and it is in a proceeding—it must be a proceeding and the word 'proceeding' has a legal sequence—then if you have a complaint of such an illegality resulting from its procedure or such things, then you can come. There again, simply because there is an illegality, you cannot get redressal, unless there is a substantial failure of justice. Therefore, to my mind, both clauses (b) and (c) not only do not depart from Swaran Singh Committee's recommendations but, in fact, prevent that recommendation from becoming infructuous and make provisions which give effect to those recommendations. Therefore, the first impression likely to be created that we have done something on our own and we have departed from the Swaran Singh Committee Report is not correct. This is what I have to say in regard to (b) and (c).

A point regarding the redressal of any injury was raised. It was said as to what was the use of redressal after the injury was caused. An argument has been given—can you go to the court of law and say, here is a threatened injury and if redressal does not cover such an injury, then things become difficult for you? That redressal is not confined only to *post-facto* redressal—after an injury is caused. We have had innumerable instances under Article 226 although another specific provision was there For example, a house is to be requisitioned or demolished. Demolition is a more serious case. I agree with you that it is no use going to the court after the house is demolished or after the premises are requisitioned. Redressal can also be of threatened injury. As I said, I will give further thought to this. May be, I am wrong. That is my first reaction.

SHRI INDRAJIT GUPTA: Likely injury or some such words can be put.

SHRI H. R. GOKHALE: I shall consider that. I have understood the point. I have given my *prima facie* reaction. After mature consideration, if it needs any change, I will bring before you.

SHRI C. M. STEPHEN: 'Grievances' may be taken care of.

SHRI H. R. GOKHALE: It is a very dangerous thing. It may make it subjective both for the judge and for the litigant. I am sorry I cannot accept that suggestion.

That is with regard to (a), (b) and (c).

SHRI BHOGENDRA JHA: I would like to draw your attention to—'to practise any profession, or to carry on any occupation, trade or business'.

SHRI H. R. GOKHALE: It is wrong to think that carrying on occupation, trade and business is relatable to big business. There can be small professions and still they are professions. There can be trade of a very small nature. In fact most of the trade is confined to small business, although there are very big traders, perhaps a little less than the industrialists. Making a blanket provision will not give relief to trade and profession. To my mind it is not a very satisfactory thing to do.

Even a small shopkeeper or a vegetable vendor is doing business. Therefore, it is very risky and dangerous to make any such exclusion from this.

I was emphasising, even if it is with regard to trade or business or profession, there is no relief provided for under Article 226(b), unless there is a violation of the law or there is a violation of the Constitution. Therefore, to say in respect of these matters, even though there is violation of law and the Constitution or any rule, that you will not get any redress against this violation of law, even though it is an illegality that you are in trade or business, is to my mind not at all justified.

Coming to the other part of it, what I feel is this. There are certain parts which need to be looked into Mr. Stephen said that the Swaran Singh Committee proposed alternative and efficacious. What I want to say is that the Swaran Singh Committee recommended only alternative. That is to say, if there is an alternative remedy, then, no redress should be available. That does not mean that the argument in favour of efficacious thing is not valid.

SHRI C. M. STEPHEN: Don't ground it on Swaran Singh Committee recommendation.

SHRI H. R. GOKHALE: I am not doing that. I have laboured hard to show how clauses (b) and (c), although appearing to be not in line with Swaran Singh Committee's recommendation, are in fact, by way of implementation of those recommendations to make them effective. We must appreciate the point that the Committee received memoranda from 4,000 people. People who have had rich experience have gone into it and made recommendation. I was also involved at some stage in this They have made recommendations and our normal inclination should be not to depart from those recommendations but to give effect to them as far as possible. That is my approach. I know that Swaran Singh Committee has not recommended any blanket provision in respect of stay orders for public works or in other words, that there should be a blanket provision on the courts to grant stay orders. Now, I know, it was obviously intended with the larger motive. You have the execution of public works, you are talking of something which hinders the building of a dam for irrigation. Or it may be construction of road which links up city with an aerodrome or even a road linking one village with another and so on. In the interest of the community certain public works are being undertaken which over-ride every other consideration. It was the main intention. It could not be anything else. We don't want to do injury to a citizen. There is something larger than that. There is injury to society which is caused by stopping of public works which is more important. That was the objective. And even there it is true that in some cases it might become necessary to pull down a house or even a small hut and so on. Such a thing can happen. But the thing is this. At some stage you have to make up your mind whether you can allow these

things to come in the way of our development. You can say whether persons have to be compensated in money or otherwise. It may be that in some cases Government can give alternative site. It may not be money. Compensation can be in more than one form. It might be that when you consider the larger interests of society some injury to some people might be inevitable. But it happens to everybody. You should look at the things from the larger perspective. Although there has been some justification in the criticism made I am not now in a position to say that I will necessarily change it but I can say I will give my thought to it.

The second part of the matter is this no grave objection has been taken to it. That is the necesity, the requirement, to give notice before a stay order or an injunction is issued. I think there is something which everyone seems to have accepted and that is that this additional provision, in some cases, may be so bad that you wait for two days and, injury is already done, which is irremediable. For that, enough care has been taken under the provisions.

As the scheme of the Article stands to-day, although the word 'efficacious' is not put—it was not there even in Art. 226—I have come across cases where, in fact, the complaint has been this. Take for example notice under Section 80 of the Civil Procedure Code. I am going to give you a similar example. When you give notice, the intention is that the State is to be told that a citizen has a particular grievance and two month's time is given. The State, should, on its own, look into the grievance of the citizen and redress that if possible. If it is not possible to redress it, then the citizen can go to the court of law. That was the original intention. But, I have heard some complaints in some cases that giving of a notice has led to more expeditious and quicker action by Government. Under the Civil Procedure Code which we have amended—you must have also seen it—notice under Section 80 is dispensed with. While you give notice, normally, nobody can take action because once the notice is given that something very bad is done or something damaging is done, the court acts on it and, for reasons recorded in writing, the court grants a stay order.

I would like to tell here that the Supreme Court imported the concept of efficacious and adequate remedy by judicial interpretation. It has not been there in any other law. It is much better to consider this matter as to which way we may put this to do away with the difficulties which may arise and also the difficulties that you mentioned. We are taking all these into account. That is all I am saying at the moment.

I have taken note of the arguments that you gave me in the morning with regard to other clauses. And after full consideration, if anything is required to be done, I shall certainly try my very best to do something and I shall bring it before the House. I don't think that Art. 226 is that bad as it appears. I still insist on saying that the powers of the judiciary in respect of matters which should belong to them have been retained.

That is all my submission.

SHRI BHOGENDRA JHA: My amendment No. 473 wants deletion of lines 11 to 13. The High Court may issue an interim order.

SHRI H. R. GOKHALE: I think there is some misunderstanding. I have looked at that clause. I think you are referring to sub-clause 5 of clause 38. It reads as follows:—

> "The High Court may dispense with the requirements of sub-clauses (a) and (b) of clause (4) and make an interim order as an exceptional measure if it is satisfied for reasons to be recorded in writing that it is necessary so to do for preventing any loss being caused to the peti-

[Shri H. R. Gokhale]

tioner which cannot be adequately compensated in money but any such interim order shall, if it is not vacated earlier, cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the High Court has continued the operation of the interm order."

This is what you are referring to.

In most of these cases the period of notice is 14 days. You cannot get a write against any order if the notice is not given within the meaning of Art. 226. The cases are normally against government. And fourteen days' notice is the normal period which might be considered reasonable for the State to come before the Court. In fact this is against the government.

It is not anybody's fault. I think this notice is enough. It might be this department or that department. The matter is considered at various levels and then the views of various Ministries, who are directly or indirectly affected by a particular thing, are obtained. Therefore, it usually takes considerable time. If this thing had not been done, the Government would not have been geared up to prepare their case and come before the court within 14 days. Therefore, the period of 14 days is not so much against the citizen as against Government.

Coming to the other thing, in spite of the fact that 14 days' notice is there, suppose notice is served on a particular date and Government is ready, and it comes before the court say, in two or three days,the court vacates the injunction. Then of course you cannot say 'wait for 14 days' because both sides have been heard, the other side had been given notice and both sides had been board and it is over within three days and the effective part of the article has been given effect to. But if there is a deliberate attempt not to comply with this within 14 days..

SHRI INDRAJIT GUPTA: By whom?

SHRI H. R. GOKHALE: In this case, it may be the Government, That is what I am telling you. It is directed more against Government than anybody else. Writ petitions are filed, ordinarily, in most cases, against authorities defined within the meaning of 'State' in art. 12. I cannot file a writ petition against you as an individual, the citizen. It is the citizen's remedy against authority.

SHRI BHOGENDRA JHA: If you bad provided that this would be after they have been heard, it would have been all right. Here it is an *ex-parte* stay order. Notice has not been served to the other party.

SHRI H. R. GOKHALE: It cannot be.

SHRI BHOGENDRA JHA: If it is after having heard the other side, that is another thing.

SHRI GOKHALE: I think it is simple. The period of notice begins to be calculated from the date of service. That need not be provided here. It is there in the General Clauses Act. It is there in the enact. ment. These are made applicable in interpretation of the Constitution.

SHRI INDRAJIT GUPTA: You spoke of deliberate delay. Then what happens?

SHRI H. R. GOKHALE: Suppose, in spite of service of notice, you do not come before the court before 14 days. Then there is no question of the court saying that the 14 day period will be extened. It will be a case where the injunction will stand vacated.

The general impression—I want to repeat it—that these are provisions which hamper the citizen's freedom is entirely wrong. On the contrary.

You look at 226. All the writs, *certiorari* (against quasi-judicial authority), *mandamus* (against authority or Government) and *quotwarranto* (against *usurper* in public office)—all these are directed against authority.

Therefore, let us dispel this impression that there is anything which is going to hurt the citizen. On the contrary, these provisions are intended more to protect the citizen on account of dilatoriness which may be attempted by these authorities. This is the explanation and I think in this view of the matters, there should be no grievace on this account. In fact, I should have said, as a person representing Government, knowing what are the difficulties of Government, knowing that in many cases there is no deliberate delay, but the delay is caused because of the very nature of things, on account sometimes of the complexity of the problems, sometimes of the need to consult several people before you come to the court, that this is hard on me.

MR. CHAIRMAN: We go to the next clause.

SHRI B. V. NAIK: I am only asking with your permission. In fact, this will have been discussed once for all.

MR. CHAIRMAN: We are going to clause 39.

Clause 39—(*Insertion of new article 226A Validity of Central laws not to be considered in proceedings under article 226*)

SHRI C. M. STEPHEN: I beg to move:

Page 11, lines 30 and 31,—

for "the Constitutional validity of any Central Law in any proceedings under that article".

substitute—

"in any proceedings under that article the constitutional validity of any Central or of any law of any State outside its territorial jurisdiction". (128).

18 hrs.

SHRI INDRAJIT GUPTA: I beg to move:

Page 11, line 30,—

after "Central law" *insert*—

"which seeks to give effect to the principles laid down in Part IV". (474).

SHRI C. M. STEPHEN: I wanted to get clarification on a simple point from the hon. Minister. The High Court shall not consider the constitutional validity of any Central law in any proceedings under that article. I have put in an amendment to say 'not only the Central law but the law of any State outside its territorial jurisdiction'. I only want this clarification Does that mean that the jurisdiction of the High Court is limited to the State law of the State where it functions or any state law anywhere in India?

SHRI H. R. GOKHALE: The first thing is that under article 226 a petition can be filed in the territory where the cause of action has arisen. Therefore if the cause of action has arisen in respect of a State law, say in the territory of Maharashtra, then only it will have jurisdiction. There is a specific clause in the Constitution. Therefore, it is subject to all the existing restrictions.

SHRI C. M. STEPHEN: What is our concept? When we say state law, is that the meaning? It does not come directly here.

SHRI H. R. GOKHALE: I think this clarification is not necessary because according to me it will come up in a very negligible number of cases. Taking an illustration, nobody is going from Ernakulam to Bombay to file a writ petition unless some-

[Shri H. R. GOKHALE]

thing done in Bombay by the Maharashtra Government hurt him.

18.02 hrs.

[SHRI C. M. STEPHEN in the Chair]

श्री भान सिंह भौरा: (भटिंडा) : चेयरमैन साहब, हमारी पार्टी की तरफ से यह जो अमेंडमेंट मूव हुई है उसको पेज 11 में जो आर्टिकल 226ए इंसर्ट करना जा रहे हैं उसमें यह एड करना जरूरी है । मैं समझता हूं कि यह अच्छी बात है हमारा तजुर्बा यह बताता है कि जितने भी प्रोग्रेसिव एक्ट्स बनते है उसमें हमेशा ही हाई कोर्ट के जजिज बाधा बनते आये है यों कि उनकी विचार धारा ही ऐसी है । हमारे सामने मौलाना साहब ने कई केसिज कोट किये है । मुझको तो पंजाब का तजुर्बा है। वहां जो भी फैसले हुये है वे बहुत ही रिएक्शनरी हुये है । उन्होंने हमेशा लैण्ड लार्ड के हक में जाने की कोशिश की है ।

चेयरमैन साहब मैं आपको बताऊ कि फैमिली का डेफिनिशन क्या हो इसको हाई कोर्ट ने स्ट्राइक डाउन कर दिया । यहां तक कि एक लेण्ड लार्ड से कह कर एक जज ने रिट फाइल करवाई । उसके बाद फैसला किया गया । ऐसे बहुत से केसिज हमारे सामने है ।

हमारे पंजाब में लैण्ड के ताल्लुक रखने वाले लाज इम्प्लीमेंट नहीं हो रहे हैं इन जजिज की वजह से । ट्वन्टी पोइंट्स प्रोग्राम भी इम्प्लीमेंट नहीं हो रहा है । लोग जा कर स्टे आर्डर ले लेते है और फिर वहां से कागज ही नहीं निकलते । हमको जवाब हैं कि एक लैण्ड लार्ड ने दो सौ एकड़ जमीन रखी हुई थी । उसके खिलाफ '73 में फैसला करवाया गया कि वह जमीन काट कर हरिजनों को दे दी जाय । वह संगरूर जिले का रहने वाला है । उसने पटियाला जिले में जाकर स्टे आर्डर ले लिया और वह जमीन का गलत नक्शा दे कर के। इस तरह से आज-कल तक फैसला नहीं हुआ ।

हमारी अमेंडमेंट मुनासिब है । इस पर आप सोचें । हम सिर्फ यह कह रहे है कि जो सेन्ट्रल लाज है जैसे दीनल एक्ट है कोई इंडस्ट्रियल डिस्प्यूट्स के बारे में एक्ट है ऐसे जो एक्ट्स है जो छोटे छोटे गरीब आदमियों को एफैक्ट करते हैं उसके बारे में तो इजाजत होनी चाहिये ताकि उन्हें कोर्ट से रिमेड मिल सके । डाइरेक्टिव प्रिंसीपल्स से सम्बन्धित जो और चीजें है, ठीक हैं उनके बारे में आप कह सकते है। लेकिन इन एक्ट्स के बारे में तो आप इजाजत दीजिये। यह बहुत सिम्पल बात हैं । इसका परपज भी सीधा-सादा है । और आम लोग भी आपकी सराहना करेंगे ।

इन शब्दो के साथ मैं मंत्री जी से प्रार्थना करूंगा कि वह हमारे एमेंडमेंट को स्वीकार कर लें ।

SHRI H. R. GOKHALE: Sir, it is very difficult to accept the suggestion. The intention is very good, but it is very difficult to accept because, first of all, it will open out a large number of cases and it will defeat the purpose for which the amendment is intended.

MR CHAIRMAN: Now, let us take up Clause 40. Amendment No. 93—Shri Shanker Rao Savant—not present. Amendment No. 129 Mr. C. M Stephen—not moving. Amendment No. 186, Mr. C. M. Stephen —not moving. Amendment No. 284, Shri S. N. Misra —not present. Now, let us go to the next Clause, that, is, Clause 41. There is no amendment to this Clause. Now, let us go to Clause 42. Amendment No. 94—Shri Shanker Rao Savant—not present. Amendment No. 187, Mr. C. M. Stephen— not moving. Amendment No. 222 Shri P. Narasimha Reddy—not present. Amendments No. 243 and 244, Shri K. Suryanarayana—not present. Amendment No. 340, Shri M. C. Daga

SHRI M. C. DAGA: Shri I am not moving.

MR. CHAIRMAN: Amendment No. 586, Shri Priya Ranjan Das Munsi.

SHRI PRIYA RANJAN DAS MUNSI: I am not moving.

SHRI K. RAGHU RAMAIAH: Sir, I have a submission to make. Now, discussions on 42 Clauses are over. Some Members have represented to me that it has been tiresome for them to sit late because we have been discussing these Clauses since morning and in response to that I am going to suggest that after I have submitted my report, we may adjourn today and I would request the House that if necessary we may sit late on Monday. On Monday you will be fresh coming after the week-end.

18.04½ hrs.

BUSINESS ADVISORY COMMITTEE

SIXTY-FIFTH REPORT

THE MINISTRY OF WORKS AND HOUSING AND PARLIAMENTARY AFFAIRS (SHRI K. RAGHU RAMAIAH): I beg to present the Sixty-fifth Report of the Business Advisory Committee.

18.05 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Monday, November, 1976/Kartika 10, 1898 (Saka).

GMGIPMRND—Jo'h I—2036 LS—JC 1595 8-11-76—978